

*United States Court of Appeals
for the Second Circuit*



APPENDIX

74-1415

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-1415

OFFICE OF CORPORATION COUNSEL

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LAWYER'S APPENDIX
CITY OF NEW YORK

NELLIE HILL, et al.,

Plaintiffs-Appellants,

-vs.-

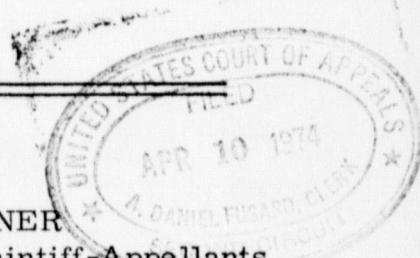
THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' APPENDIX

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APPENDIX

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

NELLIE HILL, TONY CHOW, JAMES GARCIA,
WALTER McNAIR, LINO ACEVEDO, BARBARA
GADSDEN, each individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION; JAMES R. DUMPSON,
individually and in his capacity as Administrator
of the New York City Human Resources Adminis-
tration; THE NEW YORK CITY YOUTH SERVICES
AGENCY, CARLETON IRISH, individually and in
his capacity as Acting Commissioner of the New
York City Youth Services Agency; THE NEW YORK
CITY DEPARTMENT OF PERSONNEL; THE NEW
YORK CITY CIVIL SERVICE COMMISSION; HARRY
I. BRONSTEIN, individually and in his capacities
as Director of the New York City Department of
Personnel and Chairman of the New York City
Civil Service Commission; and JAMES W. SMITH
and JOSEPHINE GAMBIN, each individually and
in his or her capacity as Civil Service Commissioner.

: COMPLAINT
(Class Action)

Defendants.

-----X

JURISDICTION

This proceeding is brought under (1) 42 U.S.C. § 1981,
providing for the equal rights of all persons within the jurisdiction of
the United States; (2) 42 U.S.C. § 1983, providing for the right of
civil action to redress deprivation under color of state statute,
ordinance, regulation, custom or usage of rights privileges or
immunities secured by the Constitution and laws, and (3) the Fifth
and Fourteenth Amendments to the United States Constitution, pro-
tecting all persons against denial of due process of law by the States
and their agencies and securing to all persons the equal protection

of the laws. In this action, plaintiffs seek to redress and enjoin violations of those provisions of the Constitution and laws of the United States and (4) the Emergency Employment Act of 1971 42 U.S.C. 4871 providing for the employment of the hard-core unemployed underemployed and veterans. Plaintiffs also seek a declaratory judgment pursuant to 28 U.S.C. § 2201. This Court has jurisdiction under 28 U.S.C. §§ 1333 (3) and (4), and under 42 U.S.C. 4871 et seq.

1.

A. CLASS ACTION ALLEGATIONS

(1) Plaintiffs bring this action as a class action maintainable under Rule 23 (b) (1) and (2), Federal Rules of Civil Procedure;

(2) The class includes all persons similarly situated to the named plaintiffs, to wit:

(a) all Black, Asian and Hispanic provisional employees presently employed by the Youth Services Agency of the New York City Human Resources Administration who took an examination entitled "Open Competitive for Assistant Youth Services Specialist," Examination No. 3004 given by the New York City Department of Personnel, for permanent appointment to the position of Assistant Youth Services Specialist, but by virtue of their failing to obtain a score of 70 or above on that examination are not eligible for, or will not be appointed to, the Assistant Youth Services Specialist position; and consequently will lose their jobs; and

(b) all Black, Asian, or Hispanic provisional

employees presently employed by the Youth Services Agency of the New York City Human Resources Administration who took an examination entitled "Open Competitive for Youth Services Specialist Examination No. 2181," given by the New York City Department of Personnel, for permanent appointment to the position of Youth Services Specialist, but by virtue of their failing to obtain a score of 70 or over on that examination are not eligible, or will not be appointed to the Youth Services Specialist position; and subsequently will lose their jobs; and

(c) all Black, Asian or Hispanic provisional employees presently employed by the Youth Services Agency of the New York City Human Resources Administration who took an examination entitled "Open Competitive Assistant Supervisor of Youth Services Examination No. 2253," given by the New York City Department of Personnel for permanent appointment to the position of Assistant Supervisor of Youth Services, but by virtue of their failing to obtain a score of 70 or above on that examination are not eligible for, or will not be appointed to, the Assistant Supervisor of Youth Services position, and consequently will lose their jobs; and

(d) all Black, Asian or Hispanic persons who took Examinations Nos. 3004, 2181, or 2253 and by virtue of their failing to obtain a score of 70 or above on the examination are not eligible for, or will not be appointed to any of the above named positions; and

(e) all Black, Asian and Hispanic provisional employees presently employed by the Youth Services Agency of the New York City Human Resources Administration who took examinations Nos. 3004, 2181 or 2253, and who attained a score of 70 or above, but who did not attain a sufficiently high score to be listed among the top eligibles, and who, therefore, will not be appointed to permanent status, in any of the above named position and consequently will lose their jobs and

(f) all Black, Asian or Hispanic persons who took examinations Nos. 3004, 2181 or 2253, and attained a score of 70 or above, but who did not attain a sufficiently high score to be listed among the top eligibles, and who, therefore, will not be appointed to permanent status in any of the above-named positions.

(3) The Class as defined above is so numerous that joinder of all members is impracticable.

(4) The named plaintiffs are fully representative members of the class and will fairly and adequately protect class members' interests. They are, as more fully set forth below, Blacks, Asian and Hispanic provisional employees who have taken the examinations here challenged and failed to pass them or who passed but received low scores and who are now in imminent danger of losing present positions as provisional Assistant Youth Services Specialists, Youth Services Specialists or Assistant Supervisor of Youth Services as a result of imminent appointments based on the examinations.

(5) The questions of fact common to the class include:

(a) Whether the civil service examinations on

which permanent appointment to Assistant Youth Services Specialists, Youth Services Specialists or Assistant Supervisor of Youth Services depends (Exams 3004, 2181 and 2253) have the effect of disproportionately screening out Black, Asian and Hispanic applicants?

- (b) Whether examinations Nos. 3004, 2181 and 2253 are significantly job related?
- (c) Whether the procedure under which defendants administer and grade the civil service examinations, and establish eligibility lists based on them, is arbitrary, secretive, and subject to racially and ethnically discriminatory manipulation, falsification, or abuse?
- (d) The questions of law common to the class include:
 - (i) Whether defendants' examinations Nos. 3004, 2181 and 2253 are unlawful, in that they disproportionately screen out Black, Asian and Hispanic persons, and are not and could not be shown to be valid or job related?
 - (ii) Whether appointments from the eligibility lists promulgated pursuant to examinations No. 2181 and 2253 would or will violate the rights of Black, Asian and Hispanic persons protected by the Constitution and laws?
 - (iii) Whether the arbitrary, secretive, and easily manipulable system of administering, developing and scoring examinations and ranking eligibles violates, or tend to violate, the due process and

equal protection rights of Black, Asian and Hispanic applicants for Supervising Resources Specialist positions?

(iv) The nature of appropriate injunctive and affirmative relief from defendants' unlawful practices and their effects.

6. Plaintiffs Chow and Garcia also bring this action as members of a sub-class pursuant to FRCP Rule 23(c)(4).

7. The sub-class includes all persons similarly situated to plaintiffs' Chow and Garcia, *ta. wit:*

(a) all Black, Asian and Hispanic provisional employees of the Youth Services Agency of the New York City Human Resources Administration who were originally hired under the Emergency Employment Act of 1971, 42 U.S.C. 4871, to work at the Youth Services Agency, who thereafter were transferred from EEA positions and reclassified as YSA employees and took Examination Nos. 3004 and 2181, for permanent appointment to the positions of Assistant Youth Services Specialist and Youth Services Specialist respectively, but by virtue of their failing to attain a score of 70% or above on those examinations are not eligible for, or will not be appointed to, the Assistant Youth Services Specialist or Youth Services Specialist positions, and consequently will lose their jobs, and

(b) all Black, Asian, and Hispanic provisional employees of the Youth Services Agency of the New York City Human Resources Administration who were originally

hired under the Emergency Employment Act of 1971, 42 U.S.C. 4871, to work at the Youth Services Agency, who thereafter were transferred from EEA positions and reclassified as YSA employees and took Examination Nos. 3004 and 2181, for permanent appointment to the positions of Assistant Youth Services Specialist and Youth Services Specialist respectively, and attained a score of 70% or above, but who did not attain a sufficiently high score to be listed among the top eligibles, and who, therefore, will not be appointed to permanent Assistant Youth Services Specialist or Youth Service Specialist status, and consequently will lose their jobs.

8. The sub-class as defined above is so numerous that joinder of all members is impracticable.

9. The named sub-class plaintiffs are fully representative members of the sub-class and will fairly and adequately protect sub-class members' interests. They are, as more fully set forth below, Black, Asian, and Hispanic provisional employees who were originally hired pursuant to the Emergency Employment Act of 1971, 42 U.S.C. 4871, and who were transferred into YSA provisional titles and are now in imminent danger of losing their present positions as provisional Assistant Youth Services Specialists, Youth Services Specialists, or Assistant Supervisor of Youth Services as a result of imminent appointments based on the examinations.

10. The questions of fact common to the sub-class include:

(a) Whether the hiring procedures of the sub-class by defendants included the statutory requirement that artificial barriers to employment, such as civil service requirements which restrict employment opportunities for the disadvantaged

would be eliminated?

(b) Whether defendants ever promulgated a description of career opportunities and job advancement potentialities for members of the sub-class?

(c) Whether defendants ever provided counselling and health care services to members of the sub-class?

(d) Whether defendants ever provided or maintained any upgrading and other manpower programs for work in the same field or other fields for members of the sub-class?

II. The questions of law common to the sub-class

include:

(a) Whether defendants hiring and training procedures are unlawful with respect to members of the sub-class in that they have failed to carry out the congressional mandate expressed in 42 U.S.C. 4876(11), (12), (13) and (16)?

(b) Whether defendants have violated 42 U.S.C. 4876(18) by failing to eliminate artificial barriers to employment and occupational advancement for members of the sub-class, including the failure to eliminate civil service requirements as a requisite for continuation in the job, or for promotional opportunities?

(c) Whether defendants' entire program of recruitment, hiring, and job requirements for maintenance and promotional opportunities for members of the sub-class violates the entire purpose and scope of the Emergency Employment Act of 1971?

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B. THE PLAINTIFFS

12. Plaintiff Nellie Hill is a Black resident of the State of New York. She was first employed by Youth Services Agency in August, 1968, as a Junior Street Club Worker. After a maternity leave beginning April 1970, she was reappointed and promoted to the position of Provisional Youth Services Specialist in April, 1970. She continues in that position to the present. Her performance in all positions held at Youth Services Agency, at all times, has been rated as very good. On January 26, 1973, she took Examination No. 2181 for the position of Youth Services Specialist. She was systematically denied access to appropriate information which would enable her to take the correct examination and to adequately prepare for it. Although she applied for Examination No. 2181 at the proper time, she did not receive an examination identification card and number from the Department of Personnel, which must be presented at the examination. Despite her efforts to obtain the required identification card and number, she was unable to obtain them from the Department of Personnel by the time of the examination and was told by Youth Services Agency that she did not need these materials. As a result of these procedural errors on the part of the Department of Personnel and Youth Services Agency, plaintiff Hill lost the first hour of the three-hour and examination/she was notified that she failed the exam. Additionally, plaintiff Hill was never notified by defendants of the availability of Examination No. 3004, for Assistant Youth Services Specialist. Although she had filed experience papers both in 1968, when she was hired, and in 1971, when she was reappointed, she was not given the opportunity to take Examination No. 3004 by filing an experience paper with the Department of Personnel in 1973. Consequently, she cannot even become permanent in the lower position of Assistant Youth Services Specialist.

Plaintiff Hill's position as a provisional Youth Services Specialist is imminently in jeopardy as a result of her performance on Examination No. 2181. When appointments are made from the eligible list, she will be fired and replaced by a person on the eligibility list.

13. Plaintiff Tony Chow is a Chinese resident of the State of New York. He was first employed by the Youth Services Agency in May 1972 under the Emergency Employment Act (EEA) as an Assistant Youth Services Specialist. He continues in that position to the present. His performance in this position at all times is very good. He took Examinations Nos. 3004 and 2181 in January, 1973. He was notified that he passed Examination No. 3004 with a score of 77.7% and that he failed Examination No. 2181 with a score of 64%.

Plaintiff Chow's position as a provisional Assistant Youth Services Specialist is imminently in jeopardy as a result of his performance on Examinations Nos. 3004 and 2181. When appointments are made from the eligible lists for Assistant Youth Services Specialist, he will be fired and replaced by a person who scored higher on Examination No. 3004.

14. Plaintiff James Garcia is a Puerto Rican residing in the State of New York. He was first employed at Youth Services Agency in January, 1972, under an Emergency Employment Act job classification. His job status was reclassified from the Emergency Employment Act line to the status of provisional Assistant Youth Services Specialist, a Youth Services Agency classification, in June, 1972. Plaintiff Garcia

remains in that position at present. His performance in all positions held with the Youth Services Agency at all times has been good. On January 26, 1973 he took Exam. No. 2683, Promotional Examination for Youth Services Specialist. In October 1973, he was notified that his exam had not been graded because he was not qualified to take the exam. In fact, plaintiff Garcia would have qualified for the Open Competitive Examination for Youth Services Specialist rather than for the promotional exam. Prior to the exam, however, he was never notified that he had applied for the wrong examination, nor was he ever advised by the Youth Services Agency or by the Department of Personnel that he would qualify for the Open-Competitive Examination. Plaintiff Garcia also was qualified to take Exam No. 3004 for Assistant Youth Services Specialist, which consists of filing an experience paper at the Department of Personnel. However, he was never notified by either Youth Services Agency or the Department of Personnel of the availability of this exam.

Plaintiff Garcia's position as a provisional Assistant Youth Services Specialist is imminently in jeopardy as a result of Exam No. 3004. The eligible list for this position, promulgated in the latter part of 1973, and based on the results of the examination, defines who will receive permanent positions as Assistant Youth Services Specialist. When appointments are made from the list, plaintiff Garcia will be fired and replaced by a person who passed the exams and placed high on the list.

15. Walter McNair is a Black resident of New York State. He has been employed by the Youth Services Agency since 1962, with the exception of a period from 1966 to June 1969. From 1969 to 1973, he held supervisory positions in the Neighborhood Youth Corps program of Youth Services Agency. In January 1973, he received the Youth

Services staff classification of provisional Supervisor for Youth Services. He remains in this position at present. His functional title is Deputy Director of Neighborhood Youth Corps. On January 26, 1973, he took Exam No. 2253 for Assistant Supervisor for Youth Services. In late 1973 he was notified that he had passed the exam with a score of 77%.

Plaintiff McNair's present position in the Youth Services Agency is imminently jeopardized by the results of examination No. 2253. The eligible list for this position, promulgated in or about December 1973, and based on the results of the examination, defines who will receive permanent positions as Assistant Supervisor for Youth Services. When appointments are made from the list, plaintiff McNair will be fired and replaced by a person who scored higher on the Exam.

16. Plaintiff Lino Acevedo is an Hispanic resident of the State of New York. He was first employed by the Youth Services Agency of the HRA in 1966 as a Junior Street Club Worker. In March 1971, he was promoted to the position of Executive Director of Youth Services Agency's drug prevention program in East Harlem and District Coordinator for the East Harlem area. In late 1971, a reorganization of Youth Services Agency resulted in the reclassification of Street Club Workers to the permanent positions of Assistant Youth Services Specialist or Youth Services Specialist. However, since plaintiff Acevedo was promoted to District Co-ordinator just prior to the reclassification he did not become a permanent Youth Services Specialist and he remained a provisional employee in the higher position. In January 1973, he was promoted to the position of provisional Youth Worker Supervisor at South Bronx Community Planning District No. 1. He remains in that position at the present time. His performance in all positions held with Youth Services Agency has at all times been excellent, as evidenced by his series of promotions and periodic ratings by supervisors. On January 26, 1973,

plaintiff Acevedo took examination No. 2253 for the position of Assistant Supervisor of Youth Services and in the latter part of 1973 was notified that he had passed the exam with a score of 77% placing 192 on the eligible list.

Plaintiff Acevedo's present position in the Youth Services Agency is imminently jeopardized by the results of Examination No. 2253. The eligible list for this position, promulgated on or about December 1973, and based on the results of the examination, defines who will receive permanent positions as Assistant Supervisor of Youth Services. Approximately 20 permanent positions are to be filled when appointments are made from the list. Plaintiff Acevedo will be replaced by a person who scored higher on the exam, and despite eight years of excellent work at Youth Services Agency, he will be fired.

17. Plaintiff Barbara Gadsden is a Black resident of the State of New York. She was first employed by the Youth Services Agency of the Human Resources Administration in January 1970, as a Junior Street Club Worker. She was told when she was hired that after a six-month probationary period, she would attain permanent job status. In September 1972, she was promoted to the position of Youth Services Specialist, and in October 1972 to the position of Assistant District Co-ordinator. She remains in this position at present. Her performance in all positions held with Youth Services Agency has at all times been rated as excellent. On January 26, 1973, plaintiff Gadsden took Examination No. 2253 for the position of Assistant Supervisor of Youth Services and in the latter part of 1973 was notified that she had failed the exam, scoring 64%. She has made inquiries of Youth Services Agency administrative personnel to ascertain if she can return to her permanent Assistant Youth Services Specialist position if she is fired from her

provisional Assistant District Co-ordinator position. She has been told that she cannot return to the lower position, and that she will be fired.

Plaintiff Gadsden's present position in the Youth Services Agency is imminently jeopardized by the results of Examination No. 2253. The eligible list for this position, promulgated on or about December, 1973, and based on the results of the examination, defines who will receive permanent positions as Assistant Supervisor of Youth Services. When appointments are made from the list, plaintiff Gadsden will be replaced by a person who passed the exam, and despite her excellent work and her attainment of permanent status as an Assistant Youth Services Specialist, she will be fired.

C. DEFENDANTS

18. Defendant, the New York City Human Resources Administration is a super agency with the responsibility for planning, initiating, supervising, coordinating, reviewing and evaluating City programs and activities in the "Attack on Poverty" including the areas of community action and development, manpower and career development, social and youth services, public assistance and addiction services. It has offices at 250 Church Street, New York, New York 10013 and was established by Executive Order No. 28 on August 15, 1966.

19. Defendant James Dumpson is resident of the City and State of New York. He is administrator of HRA and has chief responsibility for the conduct of its affairs.

20. The defendant New York City Youth Services Agency is an agency under the umbrella of the super agency HRA with the responsibility of rendering vocational, educational, recreational, and counselling services to the poor and disadvantaged youth of New York City.

21. The Defendant Carleton Irish is a resident of the City and State of New York. He is the Acting Commissioner of the Youth Services Agency and has chief responsibility for the conduct of its affairs.

22. The Defendant New York City Department of Personnel is, inter alia, responsible for recruiting personnel to staff city agencies; making studies and recommendations to the City Civil Service Commission for the grading and classifying of positions in the civil service; scheduling and conducting examinations; establishing, promulgating and certifying eligible lists, and investigating applicants for positions in the civil service. The Department of Personnel has offices at 220 Church Street, New York, N.Y. 10013.

23. Defendant the New York City Civil Service Commission functions, inter alia, as a quasi-legislative body in the enactment of rules and regulations governing the civil service system; classifies all civil service positions, and orders examinations and acts as "guardian of the city's merit system."

24. Defendant Harry I. Bronstein is a resident of the City and State of New York. He is City Personnel Director and Chairman of the City Civil Service Commission and has principal responsibility for the conduct of their affairs.

25. James W. Smith and Josephine Gambino are each members of the Civil Service Commission and share responsibility for the conduct of its affairs.

D. THE FACTS UPON WHICH THE
CAUSE OF ACTION IS BASED

26. In order to qualify for the positions of Assistant Youth Services Specialist, Youth Services Specialist, Assistant Supervisor of Youth Services in Youth Services Agency, an applicant must, at a

minimum, qualify to take either Exam Nos. 3004, 2181 or 2253, respectively, and pass such examinations; 70 is the passing score for both exams.

27. Exams Nos. 3004, 2181 and 2253 operated to screen out a disproportionate percentage of Black, Asian and Hispanic applicants. The percentage of whites who passed each exam was approximately four times as great as the percentage of Black, Asian or Hispanic applicants who passed each exam.

28. Exams Nos. 3004, 2181 and 2253 have had direct impact on the racial and ethnic makeup of the imminent permanent appointments to the positions of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor Youth Services. On March 15 and 29, 1974, defendants intend to appoint four times as many whites to these positions as Blacks, Asian and Hispanics, pursuant to eligibility lists based on the above exams certified in the latter part of 1973.

29. Such appointments will have the effect of completely reversing the policy of equality of opportunity which has been fostered by the appointment of Black, Asian and Hispanic persons to Youth Services Agency positions.

30. Neither Exam No. 3004, nor Exam No. 2181 nor Exam No. 2253 bears a demonstrable relationship to successful performance of the jobs of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services.

31. Upon making permanent appointments to the position of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services, all provisional appointments will be terminated and the net effect of the permanent appointments and termination of the provisional appointments will be to displace Blacks, Asians and Hispanics who have been satisfactorily performing these

jobs with whites who have passed Exam Nos. 3004, 2181 or 2253.

32. The procedures by which Exam Nos. 3004, 2181 and 2253 were compiled, advertised, administered, graded and their scores and pursuant ranking of eligibles complied and published are arbitrary, secretive and easily racially and ethnically manipulated.

33. With respect to the sub-class claim, members of the sub-class were originally hired under the Emergency Employment Act of 1971, 42 U.S.C. 4871.

34. Subsequent to their original date of hire members of the sub-class were transferred by Human Resources Administration and Youth Services Agency payroll in provisional capacities.

35. Contrary to statute, defendants, Human Resources Administration and Youth Services Agency have never developed career training, on-the-job training or counseling programs to compliment the work performed by members of the sub-class.

36. Contrary to statute, members of the sub-class have been required to take Exams Nos. 3004, 2181 and 2253 in order to retain their jobs.

37. Contrary to statute, members of the sub-class face imminent loss of their jobs either because they have failed to pass any of the aforementioned exams or because their passing score is so low that there is no possibility of their being appointed to a permanent position.

E. VIOLATIONS OF LAW

38. The acts, practices, and policies described above, relating to the formulation, administration, and usage of civil service examination numbers 3004, 2181 and 2253 and to appointments made or to be made pursuant to those examinations, violate the federal rights of plaintiffs and members of the class they represent.

Said rights are secured to plaintiffs and members of the class by 42 U.S.C. §§1981, 1983 and by the due process and equal protection provisions of the Fifth and Fourteenth Amendments to the United States Constitution.

39. The acts, practices and policies relating to the formulation and administration of the Emergency Employment Act violate the federal rights of the sub-class plaintiffs and the members of the sub-class they represent. Said rights are secured to the sub-class plaintiffs and members of their class by 42 U.S.C. 4871, et seq.

F. IRREPARABLE INJURY

40. The appointment of any substantial number of Assistant Youth Services Specialists, Youth Services Specialists, Assistant Supervisor of Youth Services from the eligible list promulgated in the latter part of 1973 would result in the displacement of the named plaintiffs and other Black, Asian and Hispanic provisional Assistant Youth Services Specialists, Youth Services Specialists and Assistant Supervisors of Youth Services from their current positions. These class members would therefore be fired.

41. The appointment of any substantial number of Assistant Youth Services Specialists, Youth Services Specialists and Assistant Supervisors of Youth Services from the eligibility list would result in the displacement of sub-class plaintiffs and the members of the class they represent. These sub-class members would be fired.

42. In the past, defendants have administered examinations and made appointments to the job titles in question approximately once every four years. Based on this pattern, on information and belief, class members excluded from the positions of Assistant Youth Services Specialist, Youth Services Specialist, or Assistant Supervisor of Youth Services to the existing eligible list will not have another opportunity

to seek appointment for a like period of years.

G. NEED FOR RELIEF

43. Plaintiffs and the class they represent have no adequate remedy at law. They have suffered and are continuing to suffer irreparable injury as a result of defendants' reliance upon examinations which discriminate on the basis of race and ethnic background. [These discriminatory acts, practices and policies will continue to injure plaintiffs and class members in the manner described hereinabove, unless and until this Court grants the preliminary and permanent relief requested by plaintiffs. Indeed, appointments to Youth Services Specialist, Assistant Youth Services Specialist and Assistant Supervisor of Youth Services based on the discriminatorily formulated eligible list will be made immediately unless the Court enjoins the defendants from this action.]

44. Sub-class plaintiffs and the members of the class they represent have no adequate remedy at law. They have suffered and are continuing to suffer irreparable injury as a result of defendants' failure to implement on-the-job training, career development, and counselling programs. They will suffer continuing irreparable injury if defendants are permitted to carry out their unlawful practice of requiring a civil service examination for the continuation of their employment. [These discriminatory acts, practices and policies will continue to injure plaintiffs and class members in the manner described hereinabove, unless and until this Court grants the preliminary and permanent relief requested by plaintiffs. Indeed, appointments to Youth Services Specialist, Assistant Youth Services Specialist, and Assistant Supervisor of Youth Specialist based on the discriminatorily formulated eligible list will be made immediately unless the Court enjoins the defendants from this action.]

H. PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and the class they represent, request that this Court grant them the following relief:

A. Enter a declaratory judgment declaring that the acts, practices, and policies of defendants in formulating and administering examination numbers 3004, 2183 and 2253 for the positions of Assistant Youth Service Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services, in establishing an eligible list based on the results of said examination, and in making appointments based on said eligible list have deprived and continue to deprive the plaintiffs and members of the class they represent of federal rights secured to them by 42 U.S.C. §§ 1981, 1983 and the Fifth and Fourteenth Amendments to the United States Constitution.

E. Enter a preliminary and permanent injunction enjoining the defendants, their officers, agents, employees, and successors in office from acting upon the results of any civil service examination for the positions of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services which has not first been properly demonstrated to be valid and significantly related to the aforementioned positions.

C. Enter a preliminary and permanent injunction enjoining the above-named defendants, their officers, agents, employees, and successors in office from making any permanent appointments to the positions of Assistant Youth Services Specialist, Youth Services Specialist, and Assistant Supervisor of Youth Services based on the results of examinations numbers 3004, 2183 and 2253, or any eligible list based on performance on those examinations unless and until the defendants have first properly demonstrated that said examinations were valid and significantly related to performance of the job.

D. Enter a preliminary and permanent injunction enjoining the above-named defendants, their officers, agents, employees and successors in office from terminating or otherwise interfering with the provisional appointments of the named plaintiffs and certain members of the class they represent, by reason of the permanent appointment of other persons to the positions of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services based on the results of examination numbers 3004, 2183 and 2253 unless and until the defendants have first properly demonstrated that said examination was valid and significantly related to the job.

E. Enter a preliminary and permanent injunction enjoining defendants, their officers, agents, employees and successors in office from unlawfully discriminating, in any manner whatever, against Black, Asian, and Hispanic persons and members of the class represented by plaintiffs, with respect to appointments to the positions of Assistant Youth Services Specialist, Youth Services Specialist, or Assistant Supervisor of Youth Services.

F. Enter a preliminary and permanent injunction enjoining defendants, their officers, agents, employees and successors in office from acting upon the results of any civil service examination for the positions of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services as they might affect any person originally hired under and pursuant to the Emergency Employment Act of 1971.

G. Enter a preliminary and permanent injunction enjoining defendants, their officers, agents, employees and successors in office from terminating or otherwise interfering with the provisional appointments of the sub-class plaintiffs and members of the class they repre-

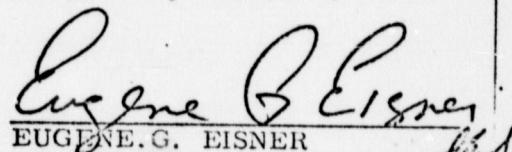
sent, by reason of the permanent appointment of other persons to the positions of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services based on the results of examinations numbers 3004, 2183 and 2253.

H. Retain jurisdiction and require appropriate reporting as to the defendants' compliance with the relief prayed for herein during a period of time sufficient to assure the elimination of all the discriminatory practices complained of and their ongoing effects.

I. Grant plaintiffs and the classes they represent such other and further equitable relief as may be appropriate, including costs and reasonable attorney's fees.

Dated: New York, New York
March 12, 1974

Respectfully submitted,


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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

NELLIE HILL, TONY CHOW, JAMES GARCIA,
WALTER McNAIR, LINO ACEVEDO, BARBARA
GADSDEN, each individually and on behalf of
all others similarly situated,

Plaintiffs,

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THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION; JAMES R. DUMPSON,
individually and in his capacity as Administrator
of the New York City Human Resources Adminis-
tration; THE NEW YORK CITY YOUTH SERVICES
AGENCY, CARLETON IRISH, individually and in
his capacity as Acting Commissioner of the New
York City Youth Services Agency; THE NEW YORK
CITY DEPARTMENT OF PERSONNEL; THE NEW
YORK CITY CIVIL SERVICE COMMISSION; HARRY
I. BRONSTEIN, individually and in his capacities
as Director of the New York City Department of
Personnel and Chairman of the New York City
Civil Service Commission; and JAMES W. SMITH
and JOSEPHINE GAMBINO, each individually and
in his or her capacity as Civil Service Commissioner.

: ORDER TO
SHOW CAUSE

Defendants.

-----X

Upon reading and filing the summons and complaint dated March 11,
1974 and the annexed affidavits of Nellie Hill, Tony Chow, James Garcia,
Walter McNair, Lino Acevedo, Barbara Gadsden, and Eugene G. Eisner, it
ORDERED, that the defendants or their attorneys show cause in
room _____ of the United States Courthouse, Foley Square, New York, New
York on March , 1974 at AM/PM why an order should not issue
pursuant to Rule 65 of the Federal Rules of Civil Procedure (1) restraining
and enjoining the defendants, their officers, employees, agents and suc-
cessors, during the pendency of this action, from making any appointments to

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positions of Youth Services Specialist, Assistant Youth Services Specialist, Assistant Supervisor for Youth Services and (2) restraining and enjoining the defendants, their officers, employees, agents and successors, during the pendency of this action, from terminating or otherwise interfering with the provisional appointments of the named plaintiffs and those members of the class who are Youth Services Specialists, Assistant Youth Services Specialists, Assistant Supervisors for Youth Services or plaintiffs or members of the class of persons who are currently or formerly employed under and by virtue of the Emergency Employment Act of 1971.

It appearing that the plaintiffs have raised questions which require further inquiry before the merits of the application for preliminary injunction can be determined and that it is in the interests of justice that this inquiry be diligently pursued and that no change be made in the status quo during the period of inquiry, it is

ORDERED that the defendants, their officers, employees, agents and successors be and hereby are restrained from making any permanent appointments to the positions of Youth Services Specialist, Assistant Youth Services Specialist or Assistant Supervisor for Youth Services; and from terminating or otherwise interfering with the provisional appointments of the named plaintiffs and those members of the classes for the purpose of replacement by persons from the existing eligible lists.

ORDERED, that this order expire within ten days after entry, unless within such time the order for good cause shown is extended for a like period, or unless the defendants consent that it may be extended for a longer period; and it is further

ORDERED, that service of copies of this Order and supporting papers therein on the defendants shall be sufficient if made personally upon the Corporation Counsel of the City of New York by the attorneys for the plaintiffs on or before the day of March 14, 1974 at 12:30 PM.

(s) Morris R. Lasker
UNITED STATES DISTRICT JUDGE

Dated: New York, New York

March 14, 1974.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

NELLIE HILL, et al., : AFFIDAVIT OF NELLIE
Plaintiffs, : HILL IN SUPPORT OF
-vs.- : PLAINTIFFS' APPLICATION
THE NEW YORK CITY HUMAN : FOR A TEMPORARY RE-
RESOURCES ADMINISTRATION, et al., : STRAINING ORDER AND A
Defendants. : PRELIMINARY INJUNCTION

----- X

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

NELLIE HILL, being duly sworn, deposes and says:

1. I am Black.

2. I am presently employed by the New York City Youth Services Agency, at Community Planning District No. 1, Queens, in the position of Youth Services Specialist. I was promoted to that position in approximately April, 1971, following my return from a maternity leave beginning April, 1970. This promotion was based on my employment with the Youth Services Agency as an Assistant Youth Services Specialist, to which position I was appointed in August, 1968, and on my extensive prior experience working with youth groups. I am about to be assigned to Community Planning District No. 13 in Laurelton, New York.

3. While holding the Assistant Youth Services Specialist title, I worked at the Chelsea, Clinton, and Lincoln Square Center projects (1968-1970). My duties consisted of channelling individuals and groups of young women into constructive activities and away from street violence. I established a number of cultural and educational programs.

4. I graduated from Plato Price High School, Charlotte, North Carolina in 1961, and attended North Carolina College, Durham, North

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Carolina for four (4) years from 1961 to 1964.

5. Prior to my employment with the Youth Services Agency, I worked as a recreation instructor at the Bedford, New York YMCA (1965), and the Woodland Community Center, Washington, D.C. (1966), as a house counselor at the Abbot House for children, Irvington-on-Hudson, New York (1966), and as a house counselor at the Graham House for children, Hastings-on-Hudson, New York (1968).

6. While performing my duties with the Youth Services Agency, I have frequently devoted my weekends, vacations, and even part of my maternity leave to supply individual aid to youths and to organize group outings for youths when the Youth Services Agency had neither the staff nor finances to do so.

7. The selection of personnel to serve as Youth Services Specialists was made by Edward Coker, Area Administrator of YSA, based on my prior experience in the area, two interviews, and recommendations.

8. Since I began in 1968, my work with the Youth Services Agency has always been rated very good, including my last rating.

9. I took an open competitive Civil Service exam on January 26, 1973 for the position of Youth Services Specialist. I was systematically denied access to all information, or to appropriate information which would have enabled me to take the correct examination and to adequately prepare for it. At a staff meeting in December, 1972, I was told that a Civil Service examination would be given on January 26, 1973 for all provisional Youth Services Agency employees, when, in fact, examinations were to be given in three separate categories - Assistant Youth Services Specialist, Youth Services Specialist, and Supervising Youth Services

Specialist - only one of which examinations I would be eligible to take. I was advised by my immediate supervisor, Philip Hawkins, that all provisional Youth Services Agency employees would be given classes and tutoring in preparation for the Civil Service examination. These classes, however, were not instituted until two weeks prior to the examination, making it impossible for me to adequately study the written material distributed in the classes rather than prior thereto, and denying me the opportunity to adequately prepare for the examination.

10. Three days before the examination, I discovered that each candidate for the Civil Service examinations had been assigned an examination identification number by the New York City Department of Personnel. I was never informed of this procedure by the Youth Services Agency, nor did I receive a post card from the Department of Personnel with such number on it, as did other applicants for the examinations.

11. When I attempted to verify this procedural requisite for taking the examination, the Youth Services Agency personnel department informed me that I would not need this number in order to take the examination. The New York City Department of Personnel, however, subsequently informed me when I called that such number would be required, and that I would receive a post card with my identification number on it shortly. When I had not received this post card by the date of the examination, I went to where the examination was being given and was there informed by the proctor that without such number I would not be able to take the examination. The proctor sent me to an office in the same building at which time, after much delay, I was finally assigned a number. This delay, in addition to causing me a great deal of mental anguish and distress, also caused me to begin the three hour examination one (1) hour late, both of which factors made it impossible for me to adequately perform on the examination.

12. Moreover, on the basis of my experience as a Youth Services Specialist with the Youth Services Agency, and my prior experience with youth groups, and particularly with street gangs, I found that many of the questions on the examination were unrelated to the work performed by or the knowledge required to perform the work of a Youth Services specialist: specifically, those questions dealing with slang words used by street youth in which the examination used 1950's rather than 1970's expressions; and those used by white, rather than Black and Hispanic youth.

13. I received a letter from the New York City Department of Personnel notifying me of my failure to pass the examination approximately three months ago.

14. After the examination, I learned also I qualified for Exam No. 3004 for permanent Assistant Youth Services Specialist status. When hired originally by YSA in 1968 and reappointed in 1971, I filed experience papers. However, I received no notice from the Youth Services Agency or the Department of Personnel that I could file another experience paper to satisfy the requirements of Exam No. 3004.

15. Failure of the examination precludes me from being placed on the Civil Service eligibility list and being permanently appointed to the position of Youth Services Specialist, regardless of prior length of service or quality of performance in that position.

16. As a result of the examination, I will be fired and replaced by a person on the eligibility list.

Nellie Hill
Nellie Hill

Sworn to before me
this 27th day of February, 1974

Carolyn Flanagan

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STATE OF NEW YORK, DEPARTMENT
ARMED FORCES COMMISSION
COMMISSIONER OF
ARMED FORCES COMMISSION
CAROLYN FLANAGAN

CAROLYN FLANAGAN
Notary Public, State of New York
No. Q-1705450
Qualified, Bronx County
Commissioned January 30, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

NELLIE HILL, et al.,

Plaintiffs,

vs.

THE NEW YORK CITY HUMAN
RESOURCES ADMINISTRATION, et al.,

Defendants

AFFIDAVIT OF TONY CHOW
IN SUPPORT OF
PLAINTIFFS' APPLICA-
TION FOR A TEMPORARY
RESTRAINING ORDER AND
A PRELIMINARY
INJUNCTION

-----X

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

TONY CHOW, being duly sworn deposes and says:

1. I am Chinese.

2. I am presently employed at Community Planning District No. 3, Manhattan, as a Community Youth Worker in the Youth Services Agency classification of Assistant Youth Services Specialist and was appointed to this position on May 12, 1972, through the Emergency Employment Act (EEA), on a year to year June - renewable basis.

3. My work with the Youth Services Agency consists of work with street gangs and individual youths in the Chinatown area. I counsel these groups and individuals about employment, educational, legal and family problems.

4. Since my employment with the Youth Services Agency, I have received written evaluation from my supervisor approximately twice a year of my job performance and have always been rated as very good.

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5. I received my high school diploma in 1970 from Seward Park High School, New York. Immediately prior to my employment with Youth Services Agency, I was in the Army for 2 years and received an honorable discharge.

6. I took the Civil Service open competitive examination for Youth Services Specialist. I received a failing score of 64 which means I am not on the eligibility list from which appointments will be made for the position of Youth Services Specialist. In addition, I took the Civil Service open competition examination No. 3004 for the position of Assistant Youth Services Specialist and received a score of 77.7% on the basis of the examination and my prior experience. Since this is very close to the failing score, I am number 186 on the eligibility list. I have been unofficially informed that no more than 70 people will be hired from the top ranking applicants on the eligibility list and that I will lose my position before the end of June since I am employed only on a year to year basis through EEA.

7. I found many of the questions on the exam to be unrelated to the work performed by, and the knowledge required of a Community Youth Worker, in the Chinatown area and specifically, the slang expressions used in a number of questions are not those used by Chinese youths. I am well acquainted with the slang expressions of the youths, having lived in the Chinatown area my entire life and having worked with street youths since May 1, 1972. A number of the questions dealt with the internal structure of the Human Resources Administration and other City agencies, which subject is completely divorced from my day to day work with street youths.

8. Failure of the examination precludes me from being placed on the Civil Service eligibility list and being permanently appointed to the position of Youth Services Specialist, regardless of prior lenght of service or quality of performance in that position.

9. As a result of the promulgation of the eligibility list and my having received a failing score, persons on the list will be given permanent appointments to the position of Youth Services Specialist, and, as I have been informed by my supervisor, I will lose my position within the next week or two.

Tony Chow
TONY CHOW

Sworn to before me

this 12 day of February, 1974

Carolyne P. Manning
NOTARY PUBLIC
Carolyne P. Manning
Notary Public, State of New York
No. 03-7700450
Qualified in Bronx County
Commission Expires March 30, 1974

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THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

NELLIE HILL, et al.,

: AFFIDAVIT OF JAMES
GARCIA IN SUPPORT OF
PLAINTIFFS' APPLICATION
FOR A TEMPORARY RE-
STRAINING ORDER AND A
PRELIMINARY INJUNCTION

Plaintiffs,

- vs. -

NEW YORK CITY HUMAN RESOURCES :
ADMINISTRATION, et al.,

:
:

Defendants.

- - - - - X

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

JAMES GARCIA, being duly sworn, deposes and says:

1. I am Puerto Rican.
2. I am employed by the New York City Youth Services Agency (YSA) as an Assistant Youth Specialist at Community Planning #3, 98 Norfolk Street, on the lower east side of Manhattan. I have worked at YSA since January 12, 1972.
3. Prior to my employment at YSA, I had been involved in youth work, at the Christian Herald Children's Home in New York City, and at their summer camp in Bushkill, Pennsylvania.
4. I was hired at YSA under the Emergency Employment Act (EEA) of 1971. I was told that the continuance of my job would be contingent upon the refunding of the EEA program.
5. Subsequently, my job was transferred from the EEA line to the YSA classification of Assistant Youth Services Specialist on June 12, 1972.
6. In my job at YSA, I work with a number of Puerto Rican youth gangs, assisting their members with school, legal, job, and family

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problems. I have a basketball team which participates in two community leagues. I work with community groups and agencies such as the Church of All Nations Neighborhood House, the P.S. 15 Evening Center, J.H.S. 60 organizing recreational activities and counselling. I have worked closely with a number of Spanish-speaking parents concerning their children's problems, and I have accompanied these parents to meet with school teachers and advisors and to translate for them. I have worked countless overtime hours.

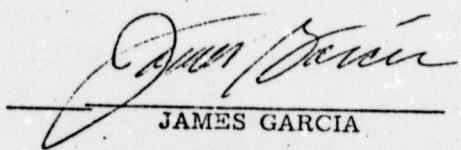
7. On January 26, 1973, I took the Civil Service promotional exam for Youth Services Specialist #2683.

8. In October, 1973, I was notified that my exam had not been graded because I was not qualified to take the exam.

9. I learned subsequently that I should have taken the Open-
No. 2181
Competitive Exam/in order to attain status as a Youth Services Specialist, rather than the promotional exam for Youth Services Specialist. However, I received no notification after applying for the test and before it was given that I was not qualified to take this exam.

10. I also learned subsequently that I could have taken Exam. No. 3004 for permanent status as an Assistant Youth Services Specialist by filing an experience paper with the New York City Department of Personnel. However, I received no notice of this exam from the Youth Services Agency or the City Department of Personnel.

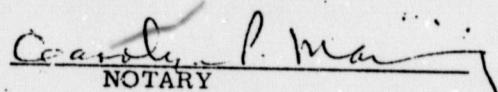
11. I have recently received notification from my supervisor, Michael Green, that my name is on a list of Youth Services Agency workers who will be fired because they do not have permanent civil service status.



JAMES GARCIA

Sworn to before me this

12 day of March, 1974.



CAROLYN P. MANNING
NOTARY

CAROLYN P. MANNING
Notary Public, State of New York
No. 03-7700450
Qualified in Bronx County
Commission Expires March 30, 1974

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

NELLIE HILL, et al.,

Plaintiffs,

- vs. -

NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants.

: AFFIDAVIT OF WALTER
McNAIR IN SUPPORT OF
: PLAINTIFFS' APPLICATION
FOR A TEMPORARY RE-
STRANING ORDER AND A
PRELIMINARY INJUNCTION.

:
- - - - - X

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

WALTER McNAIR, being duly sworn, deposes and says:

1. I am Black.
2. I am currently employed as the Deputy Director of the New York City Youth Services Agency (YSA) Neighborgood Youth Corps, 354 Broadway. I have been employed by YSA since 1962 (with the exception of a three year period from 1966 - 1969).
3. I graduated from Charles Evans Hughes H.S. in January, 1962. I have received 15 credits from Bronx Community College. I am currently studying at Empire State College, the Labor College, toward a Bachelor of Arts degree.
4. In June, 1969, I was hired by Neighborhood Youth Corps, a program within YSA, as Agency liaison, on a Youth Board Research Institute Line.
5. In January, 1973, I was transferred to a Youth Services staff classification of Supervisor.
6. About the same time, I received a letter from Curt Sonnenfeld, then YSA Director of Personnel, stating that I should take the upcoming

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Civil Service examination, Open-Competitive, for Assistant Supervisor.

7. Shortly after my transfer to the YSA line, I was promoted to my present position as Deputy Director.

8. On January 26, 1973, I took the Open-Competitive exam for Assistant Supervisor. In November, 1973, I received notification that I had scored a 77 on the exam and that my Civil Service listing was 185.

9. I found the exam to be totally irrelevant to my work at the Neighborhood Youth Corps. At least 75% of the examination questions concerned street gangs. However, my job with Neighborhood Youth Corps entails administering a program of youth employment through delegate agencies. The Youth Corps program employees do not work with street gangs.

10. At the time of the exam, I directly supervised the administrators of the Neighborhood Youth Corps Program - the five area co-ordinators, the Director of Payroll, Supervisors of the Counselling and Technical Assistance Units - who worked with the 35 agencies that provide jobs for approximately 5000 youth under our program.

11. Currently, as Deputy Director of Field Operations, I am responsible for the delivery of services to 2000 permanently-employed, 3000 high school student employees, and 60,000 summer youth employees.

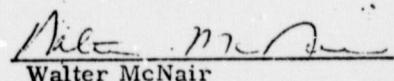
12. In early January, 1974, I was notified by Director Rosalind Reyes that I would be fired within three days to two weeks because I had a low examination score, and that I would be replaced by a person with a higher civil service listing.

13. In late January, 1974, I met with Carlton Irish, Acting Commissioner of YSA, to discuss the job status of the provisional employees of Neighborhood Youth Corps. He informed me that all provisional employees, including myself, would be replaced within one or two months by persons from the Civil Service list. He stated that at a maximum, he would hire persons from the top 35 places on the list.

14. Since I have worked at YSA, my work has been evaluated as excellent, and I have received three promotions.

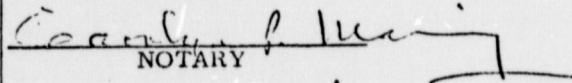
15. Receipt of a score of 77% on the examination precludes me from being permanently appointed to the position of Youth Services Specialist, regardless of prior length of service or quality of performance in that position.

16. As a result of the promulgation of the eligibility list and my having received a low score, persons higher on the list will be given permanent appointments to the position of Youth Services Specialist, and, as I have been informed by my supervisor, I will lose my position within the next week or two.


Walter McNair

Sworn to before me this

11th day of March, 1974


NOTARY

CAROLYN P. MANNING
Notary Public, State of New York
No. 03-7700450
Qualified in Bronx County
Commission Expires March 30, 1974

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

NELLIE HILL, et al.,

Plaintiffs,

-vs.-

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

AFFIDAVIT OF ROBERT
CAMPOS IN SUPPORT OF
PLAINTIFFS' APPLICA-
TION FOR A TEMPORARY
RESTRANING ORDER AND
A PRELIMINARY INJUNC-
TION.

Defendants.

- - - - - X

STATE OF NEW YORK)
,ss.:
COUNTY OF NEW YORK)

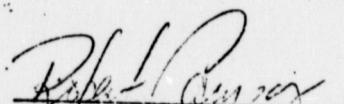
ROBERT CAMPOS, being duly sworn, deposes and says:

1. I was Executive Assistant to the Commissioner of Youth Services Agency for Neighborhood Youth Corps and Acting Director of the latter for the period of February to October, 1972. I am also familiar with the above captioned action and make this affidavit at the request of the attorneys for the plaintiffs.
2. I am familiar with the procedure by which Civil Service Assistant Youth Services Supervisors are hired. Those provisionals who do not pass the examination, or who receive a near failing score are discharged and replaced by persons chosen from the top eligibility list.
3. Walter McNair is the Deputy Director of Field Operations of the Neighborhood Youth Corps in the Youth Services Agency classification of Youth Services Supervisor, and received a near failing score on the open competitive Assistant Youth Services Supervisor examination.
4. Mr. McNair served under me as the coordinator for Neighborhood Youth Corps for city-wide agencies. In this capacity he was outstanding in his relationship with the field staff, and in supervising and administering Youth Services Agency policy and programs. Specifically,

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he was responsible for coordinating and administering the pre-summer program between Youth Services Agency and all contracting city agencies, working with a total of approximately 5,000 youths. During the summer of 1972, he supervised all of the summer field staff numbering between 150 and 200 people in the Field Service or Crisis Unit, which was involved in placing approximately 60,000 youths in summer employment.

5. I relied heavily on Mr. McNair's supervisory and administrative abilities, and found especially invaluable the rapport he was able to establish with all the field staff personnel. His outstanding performance of the above functions was an asset to the agency.


ROBERT CAMPOS

Sworn to before me this

28th
28 day of February, 1974.


NOTARY

Notary
Qualified in the State of California
Commission Expires 12/31/78

Notary
Qualified in the State of California
Commission Expires 12/31/78

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

NELLIE HILL, et al.,

Plaintiffs,

-vs.-

NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants.

: AFFIDAVIT OF LINO
ACEVEDO IN SUPPORT OF
: PLAINTIFFS' APPLICATION
FOR A TEMPORARY RE-
STRAINING ORDER AND A
PRELIMINARY INJUNCTION

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

LINO ACEVEDO, being duly sworn, deposes and says:

1. I am a Puerto Rican, born in the continental United States.

2. I am currently employed by the New York City Youth

Services Agency (YSA) as a Youth Work Supervisor at South Bronx Community Planning District No. 1. I have held this position since January 2, 1973.

3. I have been employed by YSA since January 13, 1966. My first position was Junior Street Club Worker. On March 15, 1971, I was promoted to Executive Director of YSA's drug prevention program in East Harlem, a program under the control of Youth Board Research Institute (YBRI). When I accepted this promotion, it was understood that I would also serve as District Coordinator for the East Harlem area (CPD-11) along with my other duties.

4. I graduated from Manhattan Vocational High School in 1961. While working as a machinist, I became active in my community working as a district leader for the Liberal Party. At this time, I also attended at night Bernard Baruch College at CUNY. I have earned 75 credit hours towards my B.A. degree.

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5. My duties at YSA are as follows: I supervise a staff of 12; develop and implement youth programs within the boundaries of the planning district; and represent YSA with community organizations and other governmental agencies.

6. During my employment at YSA, I have been called upon by the administration to assist in the implementation of public relations programs through the mass media. I have appeared on Spanish television and radio shows as a representative of YSA to outline YSA's programs for the Hispanic community.

7. I am a provisional employee because my original position with YSA, Junior Street Club Worker, required me to be one. In 1971, this position was re-classified so that everyone in that job became a permanent employee. I, however, remained a provisional because I was promoted shortly before this re-classification. In short, this promotion, which was based on my leadership abilities, resulted in my present job insecurity.

8. In order to remain an employee of YSA, I took Civil Service Examination No.2253, the open competitive examination for assistant supervisor of youth services. Even though I now operate as a supervisor for YSA, my provisional status necessitated my taking the assistant supervisor test rather than the promotional supervisor examination.

9. I passed the assistant supervisor exam with a score of 77%. However, since I placed 192 out of 266, and there are only 20 open positions, I am in danger of being fired because of my provisional status.

10. I found the exam to be totally irrelevant to my work as district coordinator. None of the questions concerns any areas necessary to adequately fulfill the requirements of my position.

11. My low score on the examination precludes me from being

permanently appointed in my present position, regardless of my length of service, or quality of performance which resulted in my promotion, without permanent status, to supervisor.

12. As a result of the promulgation of the eligibility list and my near failing score, persons on the list who have scored a higher passing mark will be given permanent appointments, and, as I have been informed by my supervisor, I will lose my position within the next week or two.

Lino Acevedo
LINO ACEVEDO

Sworn to before me this

17 day of March, 1974.

Carolina P. Marin
NOTARY
CAROLYN MARIN
Notary Public, State of New York
No. 03-7700450
Qualified in Bronx County
Commission Expires March 30, 1974

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-X

NELLIE HILL, et al., :

Plaintiffs,

: AFFIDAVIT OF BARBARA
GADSDEN IN SUPPORT OF
PLAINTIFFS' APPLICATION
FOR A TEMPORARY RE-
STRAINING ORDER AND A
PRELIMINARY INJUNCTION

-vs.-

NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants.

-X

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

BARBARA GADSDEN, being duly sworn, deposes and says:

1. I am Black.

2. I am presently employed by the Youth Services Agency of the New York City Human Resources Administration at the Park West Unit, Community Planning District No. 7, as an Assistant District Coordinator. I have been employed at YSA in various positions since January 28, 1970.

3. Prior to my employment at YSA, I worked at the Children's Shelter in New York from 1960-1967 as a counsellor and caseworker aide. I worked for the Neighborhood Youth Corps in the summers of 1967-1970 as a Field Supervisor. I graduated from Burke High School in Charleston, South Carolina in 1950, and I studied at North Carolina Agricultural and Technical College from 1950-1953, majoring in Sociology.

4. I was originally hired by YSA on January 28, 1970 as a Junior Street Club Worker. When I was hired, I was told that my job would become permanent after a six-month probationary period. In September, 1972, I was promoted to the position of Youth Services Specialist, and in October, 1972, to Assistant District Coordinator of the Park West Unit.

5. My duties as Assistant District Coordinator include: acting as supervisor in the supervisor's absence; supervising YSA staff workers

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work with YSA's casework referral unit: counsellor to a youth group at the Goddard-Riverside Community Center; liaison with block associations and delegate agencies; allocating YSA resources for the use of community groups; assisting individual youths with school, job, family, and legal problems; attending numerous community meetings. I have also served as the editor of the YSA Newsletter.

6. During the time I have worked at YSA, I have always received superlative ratings and commendations from my supervisors. I have also received numerous commendations and expressions of gratitude from the community groups with which I work (See, commendations attached.).

7. In January, 1973, I took Examination No. 2253 for permanent appointment to the position of Assistant Supervisor of Youth Services. On the basis of my experience as an Assistant District Coordinator, I found that most of the examination questions were unrelated to my work at YSA.

8. In December, 1973 I was notified that I had failed the exam, scoring 66%.

9. In February, 1974, I spoke to Marvin Higgins, YSA Director of Field Operations concerning my job status. He informed me that I would lose my job because I had failed the civil service exam. I asked him if I could continue to work at YSA in the position of Assistant Youth Services Specialist, since I had achieved permanent status for that job classification. He stated that although I had been permanent in that job, I was now provisional as Assistant District Coordinator, could not return to the lower classification, and would be fired.

10. Subsequently, I spoke with Barbara Repetto, YSA Director of Personnel, concerning my job status. She indicated that because I had attained permanent status as an Assistant Youth Services Specialist, there existed much confusion as to whether or not I would be fired. She

She concluded, however, that I will be fired.

12. My failure of Examination No. 2253 precludes me from being placed on the civil service eligibility list and being permanently appointed to the position of Assistant District Coordinator.

13. As a result of the examination I will be fired and replaced by a person who passed the exam, despite my many years of experience in community work and my excellent job performance.

Barbara Gadsden
BARBARA GADSDEN

Sworn to before me this
12th day of March, 1974.

Carolyn P. Manning
NOTARY

CAROLYN P. MANNING
Notary Public, State of New York
No. 03-7700450
Qualified in Bronx County
Commission Expires March 30, 1974

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November 16, 1971

Mrs. Barbara O. Gadsen
Park West Unit
Youth Services Agency
175 West 72nd Street
New York, New York 10023

Dear Mrs. Gadsen:

I enjoyed reading the "YSA Newsletter" dated October, 1971 and found that it covered a wide variety of interests.

My congratulations on the production of a lively and informative publication.

Sincerely,

Joseph Aguayo
Joseph M. Aguayo
Deputy Commissioner

JMA/krj

cc: Assistant Commissioner Bishop
Mr. Culvert



HUMAN RESOURCE'S ADMINISTRATION
38 PARK ROW, NEW YORK, N.Y. 10038/212-433-6325
TED GROSS/ COMMISSIONER

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MEMORANDUM

YOUTH SERVICES AGENCY
HUMAN RESOURCES ADMINISTRATION
38 PARK ROW, NEW YORK, N.Y.

TO: MR. MARVIN HIGGINS MR. ROBERT GREEN
DIRECTOR, FIELD OPERATIONS BOROUGH COORDINATOR, MANHATTAN
FROM: ASSIGNMENT OF ASSISTANT DISTRICT COORDINATOR CPD #7
SUBJECT: AUGUST 22, 1972
DATE:

I am recommending that Mrs. Barbara Gadsden be appointed as Assistant District Coordinator of CPD #7, Park West, effective August 28, 1972. I reached this decision after consultation with my area administrator and the district coordinator directly involved.

Mrs. Gadsden's current civil service title is Youth Services Specialist.

BG/Jgr

cc: Ed Bishop, Assistant Commissioner
Walter Johnson, Area Administrator
Allen Patterson, District Coordinator, CPD #7
Kurt Sonnenfeld, Director of Personnel
Barbara Gadsden, Youth Services Specialist

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

NELLIE HILL, et al.,

Plaintiffs,

vs.

THE NEW YORK CITY HUMAN RESOURCES :
ADMINISTRATION, et al.,

Defendants.

AFFIDAVIT OF
EUGENE G. EISNER
IN SUPPORT OF
PLAINTIFFS' APPLI-
CATION FOR A
TEMPORARY RES-
TRAINING ORDER AND
A PRELIMINARY
INJUNCTION

-----X

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

Eugene G. Eisner, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York and this Court and an attorney for plaintiffs herein. I make this affidavit in support of plaintiffs' application for the issuance of a temporary restraining order and a preliminary injunction enjoining and restraining defendants from making appointments to the positions of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services and from terminating or otherwise interfering with the provisional appointments of the named plaintiffs and those members of the class who are provisional Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services.

2. The New York City Human Resources Administration is about to, beginning on or about March 15, 1974, appoint approximately 250 persons to the positions of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services in the Human Resources Administration's

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Youth Services Agency. These appointments are to be made from an eligibility list certified to the Human Resources Administration by the New York City Department of Personnel on or about December 14, 1973, on the basis of open competitive examinations Nos. 3004, 2181 and 2253 held on January 26, 1973.

3. The named plaintiffs are Black, Asian or Hispanic.

4. Each of the named plaintiffs was provisionally appointed to the positions of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services. Upon information and belief, each was so appointed on or about the following dates:

Nellie Hill - Youth Services Specialist	- April 1971
Tony Chow - Emergency Employment Act- Assistant Youth Services Specialist	- May 1972
James Garcia - Assistant Youth Services Specialist	- June 1972
Walter McNair- Assistant Supervisor of Youth Services	- January 1973
Lino Acevedo - Assistant Supervisor of Youth Services	- January 1973
Barbara Gadsden- Assistant Supervisor of Youth Services	-October 1973

5. All provisional appointments to the position of Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services will be terminated when the permanent appointments are made. Permanent appointments will be made from the list of those who passed the aforesaid examinations.

6. Thus, on or about March 15, 1974, persons currently holding provisional Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services positions who do not qualify for permanent appointment, including the named plaintiffs and approximately 160 other Blacks, Asian and Hispanics, will be terminated.

7. Each of the named plaintiffs has performed satisfactorily or excellently in their respective titles. There is no indication that any member of the classes has performed his or her

duties other than in a satisfactory manner.

8. The respective examinations had a grossly disparate impact on Blacks, Asian and Hispanics as compared to whites. Prior to the examinations, there were four (4) times as many Black, Asian and Hispanic persons employed in the respective titles as there were whites. Of the hundreds who passed the examinations, approximately 80% of the whites passed while only 20% of the Black, Asian and Hispanic passed the examinations.

9. Plaintiffs cannot presently calculate the exact percentage of whites who passed the examinations compared to the exact percentage of Blacks, Asians and Hispanics who passed that test. Upon information and belief, data necessary to make these calculations are in the exclusive possession and control of the defendants. Plaintiffs presently seek this data as part of the accompanying Request for Production of Documents.

10. Upon information and belief, of the 160 persons about to be appointed to the respective titles less than 1/3 are Black, Asian or Hispanic, whereas 66-2/3% are white.

11. Permanent appointments pursuant to the examinations will have the effect of decreasing the number of Black, Asian or Hispanic persons in the respective positions. Such appointments will perpetuate the current racial disparity with respect to permanent appointments, and thoroughly negate the progress towards equality made through the use of provisional appointment of qualified Blacks, Asians or Hispanics.

12. On information and belief, the challenged examinations are similar in nature to other written civil service examinations which have been closely scrutinized by this and other federal courts and have been held by those courts to violate rights protected by

42 U.S.C. §§ 1981 and 1983 and the due process and equal protection clauses of the Constitution. See, e.g., Bridgeport Guardians, Inc. v. Bridgeport Civil Service Comm.

F. 2d _____, 6 EPD § 8755 (2d Cir. 1973); Chance v. Board of Examiners, 458 F. 2d 1167 (2d Cir. 1972), aff'g, 330 F. Supp. 203 (S.D.N.Y. 1971); Vulcan Society v. Civil Service Commission, _____ F. Supp. _____, Docket No. 73 Civ. 201 (S.D.N.Y. June 12, 1973) and other cases cited in the accompanying memorandum. Indeed, the challenged examination was prepared by the same agency, defendant, New York City Department of Personnel, that prepared the fireman examination held to be unconstitutional in Vulcan Society. Judge Weinfeld characterized as "unprofessional" the manner in which that examination was prepared and found that the evidence strongly indicated that the examination was not sufficiently related to the job of fireman to justify its use. Slip Opinion at 34. Presently the examination here challenged was prepared in like manner. Upon information and belief, the challenged examinations have not been professionally validated as job-related, nor have defendants made any effort to do so.

13. As more fully appears from the affidavits of plaintiffs Hill, McNair and Acevedo, most of the questions contained in the examinations were completely non-job related or in any way related to the Youth Services Agency's practices of the Human Resources Administration.

14. The procedures implemented by the defendants regarding promotional opportunities have had the effect of denying any jobs to all of the plaintiffs, as follows:

(a) As more fully appears from the affidavits of plaintiffs Hill and Garcia, persons who could easily have qualified for the entry position of Assistant Youth Services Specialist by handing in an experience paper, were not advised to do so. Accordingly, these persons cannot now "bump back" to lower positions and will be terminated.

(b) As more fully appears from the affidavit of plaintiff Gadsden, she will be terminated because although she was an Acting Supervisor, she will not even be permitted to qualify for the entry job of Assistant Youth Services Specialist.

(c) As more fully appears from the affidavit of plaintiff Acevedo, he was reclassified into a higher classification but was not in that classification long enough to qualify for the promotional exam and cannot now "bump back" because he was never permanent in any position.

15. Plaintiffs and their class will suffer irreparable harm if the requested temporary restraining order and preliminary injunction are not issued. If defendants are permitted to make appointments from the eligibility lists prepared on the basis of examinations Nos. 3004, 2181 and 2253, the present gross racial and ethnic imbalance in the position of permanent Assistant Youth Services Specialist, Youth Services Specialist and Assistant Supervisor of Youth Services will be perpetuated, and the progress towards equality made through provisional appointments of qualified Blacks, Asians and Hispanics irreparably negated.

16. The appointment of 160 persons from the eligibility lists based on those examinations would restrict the ability of the Court to remedy the underrepresentation of minorities should the Court find that such relief is appropriate, and plaintiffs would have to face the reality of no appointments because of no available vacancies. I submit that the Court should preserve its ability to grant relief with respect to the eligibility list in its entirety, since the invalidity of the entire list-- not just part of it-- will be established if plaintiffs prove at trial that the examinations were unlawfully discriminatory.

17. Further, if defendants are permitted to make appointments from the existing eligibility lists, the named plaintiffs would be terminated from their respective positions.

18. With respect to those members of the sub-class (persons employed pursuant to the Emergency Employment Act of 1971), it is clear that the defendants are about to violate the Congressional mandate that Civil Service requirements be eliminated for the maintenance of a position or for promotional opportunities, when it has notified members of the sub-class that they will be replaced because they did not pass any of the examinations.

19. If defendants are permitted to make appointments to any job now being held by an Emergency Employment Act person, the members of the sub-class would be irreparably harmed, namely, terminated.

20. With respect to the requirement that plaintiffs show a reasonable probability of success in the final outcome of this litigation, the facts sworn to in this and accompanying affidavits demonstrate beyond cavil that they shall succeed. The accompanying

memorandum of law demonstrates that the overwhelming weight of authority is on plaintiffs' side.

21. Plaintiffs respectfully request that this Court waive the requirement that they post security. Plaintiffs are persons of modest means and do not have sufficient assets to be able to purchase a bond of any significant amount.

22. This motion is brought on by Order to Show Cause rather than by Notice of Motion because defendants have not yet appeared and because of the need for prompt injunctive relief to prevent irreparable harm to plaintiffs.

23. On March 12, 1974, at 4.30 P.M., I telephoned the office of the Corporation Counsel of the City of New York and informed Leonard Bernikow, Assistant Corporation Counsel in Charge of Division of General Litigation, that I was going to make an application for a Temporary Restraining Order in the morning. He said that a representative of the Corporation Counsel's Office would meet me in Court upon due notification.

24. No prior application has been made for the relief sought in this application.

Eugene G. Eisner
EUGENE G. EISNER

Sworn to before me
this 12 day of March, 1974

Carolyn P. Manning

CAROLYN P. MANNING
Notary Public, State of New York
No. 03-7100450
Qualified in Bronx County
Commission Expires March 30, 1974

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
NELLIE HILL, TONY CHOW, JAMES GARCIA,
WALTER McNAIR, LINO ACEVEDO, BARBARA
GADSDEN, each individually and on
behalf of all other similarly
situated,

Plaintiffs,

-vs-

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants.

-----x
STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

BARBARA REPETTO, being duly sworn, deposes and
says:

1. I am Director of Personnel for the Youth
Services Agency, a component agency within the Human
Resources Administration, and, as such, am fully familiar
with the facts stated herein.

2. There are three challenged open competitive
examinations for titles in the Youth Services Specialist
(YSS) occupational series:

<u>Title</u>	<u>Exam No.</u>	<u>Test Date</u>	<u>Date Eligible List Established</u>
Assistant Youth Services Specialist	No. 3004	3/7- 3/27 1973	10/3/73
Youth Services Specialist	No. 2181	1/27/73	
Assistant Supervisor of Youth Services	No. 2253	2/24/73	12/12/73

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3. The Agency is able to provide ethnic identification data for those currently employed, those on the lists who have already been interviewed, and, to the best of our ability, for those who were in the past employed by YSA. There may be former employees whose names appear on the lists but whom we were not able to identify in the time available.

4. The examination for the entry level position of Assistant YSS was a training and experience examination, and not a written examination. Each individual who satisfied the educational and experiential requirements was eligible for the position; all eligibles "passed" the examination.

5. I am advised by the N.Y.C. Department of Personnel that of 1,239 persons who "appeared" for the examination by submitting their qualifications, 1029 passed, and 210 failed.

Exam No. 3004 - Assistant YSS

<u>Ethnicity</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>Total</u>	<u>% Passing</u>
White	16	1	17	94%
Black	50	6	56	89%
Hispanic	23	0	23	100%
Oriental	2	0	2	100%
Other	1	0	1	100%
	<u>92</u>	<u>7</u>	<u>99</u>	
Unknown	<u>937</u>	<u>203</u>		
Total	1029	210		

The percentage of those passing the examination whose ethnic identity is known is approximately 9% of total passers (92/1029); the percentage of those failing whose

ethnic identity is known is approximately 3% (7/210).

6. The N.Y.C. Department of Personnel certified to YSA the first 150 names on the eligible list for Assistant YSS. Of this number, 57 were appointed, the others having declined appointment or failed to report. The Agency's Department of Personnel interviewd all those appointed, and on the basis of personal observation, identified the ethnicity as follows:

White -	9
Black-	32
Hispanic-	15
Oriental-	1
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Of the 57 persons at the top of the eligible list for Assistant YSS, 48 were minorities, 9 White.

7. For the position of Youth Services Specialist, I am advised that 704 appeared for the written examination and were found qualified to have their examinations graded; 215 passed the written examination, and 487 failed. The Agency was able to identify the ethnicity of the following:

Exam No. 2181- YSS

<u>Ethnicity</u>	<u>Passed</u>	<u>Failed</u>	<u>Total</u>	<u>% Passing</u>
White	34	13	47	72%
Black	39	47	86	45%
Hispanic	19	19	38	50%
Oriental	2	1	3	66 2/3%
	94	80	174	
Unknown	121	407		
Total	215	487		

The ethnic identity of 44% of the total number of passers is unknown (94/215); the ethnic identity of 16% of the total failures is known (80/487).

8. The Department of Personnel certified a list of 120, representing the top 120 names on the eligible list. A total of 64 appeared for interview when called, broken down as follows:

White	21
Black	31
Hispanic	9
Oriental	2
Other	1
Total	64

Of the first 64 persons scheduled for appointment as YSS, 43 are minorities and 21, White.

9. For the position of Assistant Supervisor of Youth Services, a total of 404 appeared for the examination and were found eligible to have their exams graded: 266 passed; 138 failed.

Exam No. 2253 - Assistant Supervisor YS

<u>Ethnicity</u>	<u>Passed</u>	<u>Failed</u>	<u>Total</u>	<u>% Passing</u>
White	29	2	31	94%
Black	27	17	44	61%
Hispanic	15	1	16	93%
Oriental	1	1	2	50%
Other	2	1	3	66 2/3%
Total	74	22	96	
Unknown	192	116		
	266	138		

The ethnic identity of approximately 28% of the total number of passers is known (74/266); the ethnic identity of approximately 16% of the total failures is known.

10. The Agency has only recently received the Department of Personnel's certification for the first 68

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names on the list, and has not yet interviewed anyone. Interviews are scheduled for the week of March 25, 1974, the initial certification due to expire on April 13, 1974.

11. As to the ethnic breakdown of persons currently serving provisionally in the three positions.

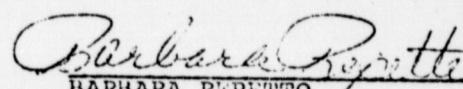
<u>Provisional</u>	<u>White</u>	<u>Black</u>	<u>Hispanic</u>	<u>Asian</u>	<u>Unknown</u>	<u>Total</u>
Asst. YSS	11	27	21	1	2	62
YSS	13	36	11	1	1	62
Asst. Supervisor of						
YS	6	15	3	1		25
						<u>149</u>

The total of 149 provisionals to be replaced by permanent appointments does not reflect the total number of appointments which will be made. As individuals are appointed from lower to higher titles, they create vacancies in the lower titles which are not included in the current tally of provisionals presently serving. Because of the interrelationship of the lists, it is impossible to predict how many appointments will be made although the number of provisionals to be replaced is fixed at 149.

12. Furthermore, not all persons currently serving provisionally in a title took the examination for that title or was eligible to have his examination graded. For example of the 62 provisional YSS's 22 took the examination and passed; 4 filed and did not appear; 2 were found not qualified; and 7 failed. Some persons currently employed as provisionals took the examination only for a higher title; others took more than one examination.

Dated: New York, N. Y.

March 20, 1974


BARBARA REPETTO
Director of Personnel,
Youth Services Agency

Sworn to before me this

20th day of March, 1974

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NELLIE HILL, TONY CHOW, JAMES GARCIA,
WALTER MCNAIR, LINO ACEVEDO, BARBARA
GADSDEN, each individually and on
behalf of all others similarly
situated,

-----x
AFFIDAVIT

Plaintiffs,

vs.

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants.

-----x
STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Paula J. Omansky, being duly sworn, deposes and
says:

1. Because of time limitations, I submit this
affidavit in lieu of a brief in opposition to the motion
or a preliminary injunction.

2. As the affidavit of Barbara Repetto, Director
of Personnel of YSA, shows, the pass-fail statistics of
only those who could be identified by the Agency are
too weak to support a motion for a preliminary injunction.

3. The ethnic identity ^{of} what is by far the majority
of test takers for each of the challenged exams is unknown.
By way of contrast, we point to Vulcan Society v. Civil
Service Commission, F.2d (2d. Cir. 1973) when
the ethnic identity of 14,168 candidates for firemen was
known as well as the survival rate of the top 4000 who had
passed the rigorous selection procedure there involved.

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See also Chance v. Board of Education, 458 F. 2d 1167 (2d. Cir. 1972).

4. There is, furthermore, no basis for concluding that the statistics of those who could be identified present a representative or reliable sample. Indeed, the opposite inference is more supportable since minorities are represented heavily at the top of the lists, and, indeed, comprise a majority of those scheduled for appointment.

5. In short, this Court is asked to enjoin the appointments of high-scoring minority group members at the behest of minorities who must resolve the contradiction of proving that the examinations had a disparate effect on them as a class as compared to whites in the face of substantial evidence to the contrary. Speculation that plaintiffs might prove their case when more statistics are available is no substitute for the hard evidence called for by Chance (a survey of 50 examinations given over a period of seven years, 330 F. Supp. 203, 209 (S.D.N.Y. 1971) or by Bridgeport Guardians, Inc. v. Members of the Bridgeport Civil Comm'n, 482 F. 2d 1333 (2d Cir. 1973) where the results of six entry level examinations were studied before deciding that the written examinations had a discriminatory effect.

6. Plaintiffs must come forward with enough evidence to show that they have made their *prima facie* case before they are entitled to preliminary relief and they have not done so.

7. It is no argument that the relevant statistics are not yet known. In this connection, for purposes of

weighing the equities, we note that plaintiffs waited until 3 days before appointments were scheduled to begin before instituting suit although the results of the examination were known 2 months previously. Had plaintiffs acted promptly, a reliable survey could have made which would not have resulted in prejudicing the rights of eligibles on the list who were anticipating appointment in March.

8. We point out that the challenged entry level examination was a training and experience examination, and not a written exam, and candidates merely filled out a form to qualify and "pass". It is unprecedented that this type of examination be attacked/ Yet if appointments were permitted from this list only, currently serving provisionals would be terminated although their names may appear on lists for higher titles, an anomalous result at best.

9. Finally, as the affidavit of Barbara Repetto shows, although whites passed written examinations at a greater rate than blacks, this does not hold true as compared to other minority groups. For example, in the examination for Assistant Supervisor, Youth Services, the figures highest title challenged,/ show that the small number of identifiable whites passed at the rate of 94%, whereas Hispanics passed at the rate of 93%, although Hispanics are alleged to suffer a discriminatory impact.

10. In sum, the statistical evidence available, which must be the predicate for granting injunctive relief,

is too sketchy, and the counter-indications of their unreliability are too strong to warrant the extraordinary relief sought. Furthermore, in consideration of the equities, it is more appropriate in this case to penalize plaintiffs for their lack of diligence, rather than innocent eligibles on the eve of appointment, particularly so where the majority of those who stand to be injured are minority group members.

Dated: New York, N. Y.

March 20, 1974

Paula J. Omansky
Paula J. Omansky

Sworn to before me this
20th day of March, 1974

MARGARET G. GOLD
Notary Public, State of New York
No. 1470720
Qualified in New York County
Term Expires March 30, 197

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

NELLIE HILL, et al.,

Plaintiffs,

-vs.-

AFFIDAVIT

NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants.

- - - - - X

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

RICHARD A. CLOWARD, being duly sworn, deposes and says:

1. I am a professor of Social Sciences at Columbia University and have been a member of the faculty for twenty years. I hold a Ph.D. in Sociology and Social Research. I am a member of the American Sociological Association, and have taught statistics at the graduate level throughout my career; conducted numerous surveys and studies, including public opinion polls, demographic and census analyses analyses of personnel and service statistics, and on racial discrimination. I am the author of numerous scientific articles and several books one of which (Delinquency and Opportunity) won the International Society of Criminology prize in 1965, and another of which (Regulating the Poor) won the annual award of the Society For the Study of Social Problems in 1971.

2. I have studied all of the data furnished by New York City to the plaintiffs in this matter, including the IBM print-outs reporting test results for all three job categories in question here. In addition, I have read the affidavits furnished by Barbara Repetto, YSA Director

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of Personnel, and Paula Omansky of the Corporation Counsel's office.

3. According to the affidavit of Ms. Repetto, 1,239 persons submitted their qualifications for Examination No. 3004 - Assistant Youth Services Specialist. Of this number, according to the City, 1,029 passed, and 210 failed. It is further averred by the City that the known ethnic identity on those passing this examination is only 9%.

A 9% sample of a population of more than 1,000, could be reliable but only if the selection procedures employed were entirely random. However, paragraph 3 of Ms. Repetto's affidavit discloses that the 9% figure is based on entirely non-random sources of information. Ethnic identity is known for those "currently employed, those on the list who have already been interviewed, and, to the best of our ability for those who were employed by YSA." These ways of discerning ethnic identity are clearly subject to all manner of bias, and it is quite probable that a genuinely random sample could result in quite different ethnic percentages. In short, a sample drawn from "lists" of various kinds known to the agency can in no way be treated as a random sample. I, therefore, cannot draw reliable conclusions from these data, nor do I believe that the defendants would be warranted in doing so.

4. For the position of Youth Service Specialist, I note that according to Ms. Repetto's affidavit, 704 persons appeared for the written examination and were found qualified to have their examinations graded; 215 passed, and 487 failed. Ethnic identification was provided for 44% of those who passed and for 16% of those who failed. Here again, the data on ethnic identification were not determined on the basis of procedures of a random kind, and may not, therefore, reflect the true ethnic proportions for the population who took the examination. However, since the ethnicity of those who passed the written examination is known in almost half of the cases, we can credit this figure with

somewhat greater reliability. Therefore, I have subjected these data to preliminary analysis, as noted below.

A table revealing the relationship between ethnic identification and examination results is attached hereto. I constructed this table as follows:

- (a) The first 150 persons scoring highest on the Youth Service Specialist examination have been qualified as "high pass", the group from which plaintiffs believe permanent appointments will be made;
- (b) those who passed the examination and appear between numbers 151 and 215 on the list are denominated "low pass"; (c) the failure category includes the 487 people who did not pass the examination.

Additionally, I computed the ethnic percentages for all high passers and they are as follows: 59% whites, 43% Black, and 29% Hispanic. There being so few Asian cases, percentages would be meaningless, and have been omitted.

I conclude from these figures that the examining procedures appear to be racially biased, given the relatively great disparity between whites and Blacks, and the exceedingly great disparity between whites and Hispanics. Disparities of this magnitude would rarely occur by chance.

5. Turning now to the results of Examination No. 2253 - Assistant Supervisor Youth Services, I note that a total of 404 persons appeared for the examination and were found eligible to have their exams graded. Of these, 266 passed and 138 failed.

Ethnic identification is known for 28% of those who passed, and for 16% of those who failed.

Here again, I examined the relationship between ethnicity and examination scores. I constructed a table, attached hereto, similar to

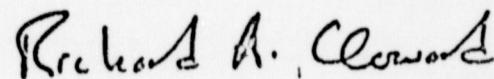
the one described in the discussion of the Youth Services Specialist examination above, except that I defined the first 50 persons on the list as constituting the "high pass" category.

By this procedure, I found that 44% of whites scored high, but only 11% of Blacks, and 13% of Hispanics. These disparities are striking and would hardly have been expected by chance.

I conclude, therefore, that there is strong reason to suspect the influence of racial bias in the testing procedures.

6. The only way in which to resolve the issues raised here with certainty would be; (1) to ascertain the ethnic identification of all persons who appeared for the examination, (2) then to draw, by strictly random procedures, samples from each examination category, and finally (3) to analyze the relationship between ethnicity and examination scores. The data that has been provided are far from making this possible.

7. In the event New York City cannot provide the necessary data, leaving us no alternative but to draw inferences from the data available, I would, excepting the Assistant Youth Services Specialist for which no conclusions can be drawn, conclude that the examination procedures being employed are racially biased.



RICHARD A. CLOWARD

Sworn to before me this

22nd day of March, 1974.

Carolyn P. Manning
NOTARY

CAROLYN P. MANNING
Notary Public, State of New York
#1234567890

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Examination No. 2181
Youth Services Specialist

<u>Ethnicity</u>	High Pass		Low Pass		<u>Total</u>	<u>% High Pass</u>
	<u>No. 1-150</u>	<u>151-215</u>	<u>Failed</u>	<u> </u>		
White	28	6	13	47	59%	
Black	38	3	47	88	43	
Hispanic	10	7	18	35	29	

Examination No. 2253
Assistant Supervisor Youth Services

<u>Ethnicity</u>	High Pass		Low Pass		<u>Total</u>	<u>% High Pass</u>
	<u>No. 1-50</u>	<u>51-266</u>	<u>Failed</u>	<u> </u>		
White	14	15	3	32	44%	
Black	5	22	17	44	11	
Hispanic	2	12	1	15	13	

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LASKER, D.J.

This application for a preliminary injunction presents particularly difficult questions. In January, February and March of 1973, the New York City Civil Service Commission administered examinations at three levels for qualification of Human Resources Administration personnel, which the named plaintiffs took and failed. They filed suit on March 12, 1974, seeking a declaration that the examinations had a discriminatory impact and thus violated their constitutional rights. On March 14th, the plaintiffs moved to restrain the defendants from appointing anybody to the vacancies for which the examinations were given prior to the determination of this case. We granted that day a temporary restraining order, which will expire March 29th, because, as our Order indicated, the plaintiffs had raised questions which required further inquiry before the merits of an application for an injunction could be determined and it was in the interest of justice that no change be made in the status quo during the period of inquiry.

Final papers were submitted on the motion on March 25th. An examination of the papers revealed that for a number of reasons, particularly the fact that no

1.

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determination of the race of a person taking a City test is made unless the validity of the examination is litigated, the information available as to the racial make-up of those who passed and failed the tests is sketchy and undependable. In an effort to amplify the record, the court conferred with the parties in Chambers to determine whether, if a reasonable extension of the restraining order were granted, sufficient information could be secured to clarify at least to a threshold degree the racial impact, if any, of the examinations. Counsel for the City has represented, and we have no reason to doubt, that no meaningful further statistics can be secured without an overall survey which would require substantial time. Such an obstacle also prevents solving the dilemma by denying the injunction but scheduling an early trial.

With the history of the situation behind us, we come to the merits. We start from the proposition that plaintiffs must base their request for injunctive relief upon a *prima facie* or threshold showing of racial impact. The burden in the first instance is theirs, nor is there any reason to lessen it on the theory that the only information available is in the hands of defendants, since by the nature of such cases, and as is actually

true in this one, all of the information available to defendants has been made available to plaintiffs. Indeed, plaintiffs do not challenge the validity of such figures as defendants have been able to provide. Although both sides do point out that the samples available at this early date are of questionable dependability, plaintiffs' attack is directed primarily to the conclusions to be drawn from the figures supplied by defendants. Those figures establish the following:

Examination #3004 was for the position of Assistant Youth Services Specialist (YSS). It was not a written examination, but rather what is known in the Civil Service trade as a "training and experience" (T and E) examination, that is, an examination in which the testees' experience and training are the sole qualifications for passing. 1,239 persons "appeared" for the examination by submitting their qualifications. 1,029 passed and 210 failed. Passing rates were as follows: Whites - 94%; Blacks - 89%; Hispanics - 100%. These figures do not support plaintiffs' claim of disproportionate impact; however they are not conclusive because no full survey has been made of the ethnic identity of the applicants and the race of only 9% of those who passed the examination and 3% of those who failed is known. Neither party doubts that the smallness of this sample raises questions as

to the dependability of the comparative passing rates, yet it is the only information before the court at this time and the result which it indicates does not establish a *prima facie* showing of racial impact.

Examination #2181 for Youth Services Specialist was a written examination. 704 persons took the test; 215 passed and 487 failed. The passing percentages were: 72% of Whites; 45% of Blacks, 50% of Hispanics. The information from which these percentages were computed appears to be more dependable than as to the first examination because the ethnic identity of 44% of passers and 16% of failures is known. At first blush, the showing of disparity in passing rates between Whites on the one hand and the two other groups on the other is disquieting. That is, if such a disparity were proven at trial, it would as a matter of law establish the racially disproportionate impact of the examination. Chance v. Board of Examiners, 330 F. Supp. 203 (S.D.N.Y. 1971), aff'd, 458 F.2d 1167 (2d Cir. 1972). Defendants point out, however, and we can by no means conclude that they are wrong, that even the sample from which the passing percentages for this test were drawn is not sufficiently large to be reliable.

The third test, also a written examination was

given for the position of Assistant Supervisor of Youth Services. 404 people took the examination; 266 passed, 138 failed. The passing figures are 95% of Whites; 61% of Blacks; 93% of Hispanics. In the case of those who took this examination, the ethnic identity of 28% of the passers and 16% of the failures was known. Accordingly, the figures here are even less reliable than those derived from Examination #2181. Furthermore, such information as is available does not indicate disproportionate impact as to Hispanics.

The inadequacies of the information upon which plaintiffs must rely and the court must decide is highlighted by the fact that even plaintiffs' expert states, for example as to examination #3004, "I ... cannot draw reliable conclusions from this data nor do I believe the defendants would be warranted in doing so". Indeed, plaintiffs' expert, Richard A. Cloward, Professor of Social Sciences at Columbia University, also criticizes the available information because the ethnic identification procedures were not determined on a random basis. Moreover, responsibility for the scarcity of information does not rest with defendants. The primary reason for the lack of data is the considerable delay in bringing this suit.

Although the eligible lists were established on October 3, 1973, for 3004, on October 16, 1973, for 2181, and on December 12, 1973, for 2253, plaintiffs did not file suit until March 12, 1974, three days before the first permanent appointments on the basis of the examinations were scheduled to be made. The responsibility for such a delay, at least between the parties, must be attributed to plaintiffs.

The situation thus described presents the question whether, on a showing which might establish a violation of constitutional rights if dependably proved, the court should intervene to restrain the normal processes of government when there is no dispute that the only information available is not reliable. Good arguments can be made both for granting relief and denying it. We believe that it should be denied because we conclude that the plaintiffs have not, in view of the undependability of the facts, established the probability of their success on the merits and that the primary cause for the unavailability of such information is their delay in bringing suit. We recognize that the denial of relief may, depending on the outcome of the case, impose substantial hardships on the plaintiffs but, in balance, we must consider, first, that we are asked to halt the ordi-

nary process of government in an important sphere and, second, that a very large percentage of those who have been appointed to the permanent positions which plaintiffs seek to fill are themselves members of the minority groups. Of 57 people who had been appointed as Assistant Youth Services Specialists by March 20th, 48 were members of minority groups and 9 whites; of 64 appointed as Youth Service Specialists, 43 were members of minority groups and 21 white. (No such figures are available for Assistant Supervising Youth Services Specialists for whom interviews have not yet been held.)

In the light of the considerations expressed above, the motion for a preliminary injunction is denied. Since, however, as we have stated above, the question presented is one on which reasonable men may differ, the temporary restraining order will remain in effect for a period of 48 hours from the filing of this Memorandum so that plaintiffs may seek further relief in the Court of Appeals.

It is so ordered.

Dated: New York, New York
March 27th, 1974.

MORRIS K. LASKER

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

NELLIE HILL, et al.,

Plaintiffs, : ORDER

-against- : 74 Civ. 1150

NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants.

- - - - - X

The Court, having ordered on March 27, 1974 that plaintiffs' motion for a preliminary injunction be denied, and having continued a temporary restraining order entered March 26, 1974 in effect for forty-eight hours after the denial of the preliminary injunction, and having been informed on March 28, 1974 by counsel for plaintiffs that the motion clerk of the United States Court of Appeal has requested counsel to see if this Court would extend its temporary restraining order until a panel of the Circuit Court would have the opportunity to hear an application for a stay on April 2, 1974, and having heard counsel for defendants' arguments in opposition, it is hereby

ORDERED that the defendants, their officers, employees, agents and successors be and hereby are restrained from taking any of the acts specified in said Order of March 14, 1974, until the United States Court of Appeals for the Second Circuit has the opportunity to hear plaintiffs' request for a stay pending appeal on April 2, 1974. Plaintiffs' request for a stay pending appeal, made pursuant to Rule 8(a) of the Federal Rules of Appellate Procedure is denied in all other respects.

Dated: New York, New York
March 28, 1974

/s/ Morris K Lasker
U. S. D. J.

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Filed on 4-1-74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.D.C.
S.D.N.Y.
FILED
4/1/74

----- X
NELLIE HILL, TONY CHOW, JAMES GARCIA,
WALTER McNAIR, LINO ACEVEDO, BARBARA
GADSDEN, each individually and on behalf of
all others similarly situated,

Plaintiffs,

NOTICE OF
APPEAL

-against-

74 Civ. 1150

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION; JAMES R. DUMPSON,
individually and in his capacity as Administra-
tor of the New York City Human Resources Admini-
stration; THE NEW YORK CITY YOUTH SERVICES
AGENCY, CARLETON IRISH, individually and in
his capacity as Acting Commissioner of the New
York City Youth Services Agency; THE NEW YORK
CITY DEPARTMENT OF PERSONNEL; THE NEW
YORK CITY CIVIL SERVICE COMMISSION; HARRY
I. BRONSTEIN, individually and in his capacity as
Director of the New York City Department of
Personnel and Chairman of the New York City
Civil Service Commission; and JAMES W. SMITH
and JOSEPHINE GAMBINO, each individually and
in his or her capacity as Civil Service Commissioner,

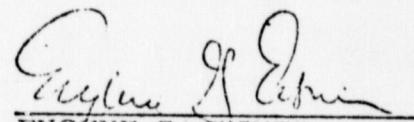
Defendants.

----- X

S I R S:

Notice is hereby given that the above-named Plaintiffs hereby
appeal to the United States Court of Appeals for the Second Circuit
from and Order by the Honorable Morris E. Lasker, entered on March
27, 1974, denying Plaintiffs' motion for a preliminary injunction.

Dated: New York, New York
March 29, 1974


EUGENE G. EISNER
Attorney for Plaintiffs
EISNER, LEVY & STEEL
351 Broadway
New York, New York 10013

TO: ADRIAN P. BURKE, ESQ.
Corporation Counsel
Municipal Building, New York, N. Y. 10007
Attorney for Defendants
PAULA J. OMANSKY, ESQ.
Assistant Corporation Counsel

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- - - - - X

NELLIE HILL, et al.,

Plaintiffs-Appellants,

: MOTION FOR STAY
PENDING APPEAL

-vs.-

: 74 Civ. 1150

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants-Appellees.

- - - - - X

Appellants, upon the affidavit of EUGENE G. EISNER, ESQ., move this Court for a stay pending appeal of the denial of their motion for preliminary injunction. This motion is of an emergency nature in that appellants and the class they represent, who are presently employed by the Youth Services Administration of the New York City Human Resources Administration, will lose their jobs, the subject matter of this Title 42, §1983 case, prior to resolution of appellants' appeal from an order denying a motion for preliminary injunction, unless a stay is granted.

Dated: New York, New York
March 29, 1974

Respectfully submitted

EUGENE G. EISNER
Attorney for Plaintiff-
Appellants
EISNER, LEVY & STEEL
351 Broadway
New York, N. Y. 10013
966-9620

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X

NELLIE HILL, et al.,

Plaintiffs-Appellants,

-vs.-

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

AFFIDAVIT IN
SUPPORT OF
MOTION FOR
STAY PENDING
APPEAL

74 Civ. 1150

Defendants-Appellees.

----- X

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

EUGENE G. EISNER, being duly sworn, deposes and
says:

1. I am the attorney for plaintiffs and file this affidavit in support of the attached motion.
2. The decision below, which is annexed hereto, sets forth appellants' claims that they were discriminated against because the Civil Service tests utilized by appellees were racially biased. Although the Court below ruled against appellants' motion, it commented, after analysing the data submitted to it, that, "Good arguments can be made both for granting relief and denying it."

80a

(p.6). The Court, therefore, granted a forty-eight hour stay so that plaintiffs could appeal, stating that "reasonable men may differ" with regard to whether a preliminary injunction should be granted. Thereafter, on March 28, 1974, the Court extended the stay until April 2, 1974 to enable this Court to hear this application.

3. Appellants will contend in their appeal that the Court below incorrectly interpreted the affidavit of Professor Cloward, which is also annexed hereto, which points out that in two out of three job categories a clear case of racial discrimination has been made out. Cloward, rather than analysing the pass-fail percentages, instead focussed in on the high pass rate as only the high passes would in fact be eligible for jobs. With regard to examination number 2253, Cloward points out that whites received high passes at four times the rate of Blacks and more than three times the rate of Hispanics (whites, 44%; Blacks, 11%; Hispanic, 13%). The percentages for number 2181 were (whites, 59%; Blacks, 43%; Hispanics, 29%). These figures make out a significantly stronger case than those relied upon by the Court below, which make no distinction between those who will actually obtain jobs and those who will not. Yet, even when using the less statistically significant figures, the Court below indicated that reasonable men may interpret these

figures as making out a prima facie case under the doctrine of Chance v. Board of Examiners, 458 F.2d 1167 (2d Cir. 1972), aff'g 330 F.Supp. 203 (S.D.N.Y. 1971). As Professor Cloward's analysis was the only expert analysis submitted, and, therefore, greater should have been accorded /weight, appellants believe that the likelihood of success in this appeal is great.

4. Appellants also contend that the Court below misread the Cloward affidavit with regard to the statistical validity of the statistics upon which he relies. Cloward does state that the sample for one category is inadequate to draw statistical conclusions. But with regard to the two more advanced categories which involved written tests, Cloward states, after setting forth what would be ideal data:

In the event New York City cannot provide the necessary data, leaving us no alternative but to draw inferences from the data available, I would, excepting the Assistant Youth Services Specialist for which no conclusions can be drawn, conclude that the examination procedures being employed are racially biased.

At the Chambers conference referred to in the memorandum below, page 2, counsel for appellants offered to call Professor Cloward to

testify if the Court had any question as to the validity of his analysis and conclusions. The Court deemed that this would not be necessary. Yet, in its opinion, the Court disregarded the substance of his analysis; instead the Court seized upon some qualifying language in the Cloward affidavit to the detriment of appellants.

5. On the issue of irreparable harm, the Court below recognized "that the denial of relief may, depending on the outcome of the case, impose substantial hardships on the plaintiffs ..." (p. 6). If plaintiffs ultimately prevail on the merits, unless preliminary relief is granted, the decision will be meaningless to the 149 persons in the class as they will have been fired. Many of whom, due to the necessities of their lives, will be, for all practicable purposes, beyond recall.

6. On the other hand, appellants contend that the possible harm to appellees would be minimal if the Court were to grant preliminary relief. As the affidavits of the plaintiffs below indicate, they have received evaluations from their superiors ranging from good to excellent. Therefore, the maintenance of these persons in their respective jobs while the Court is determining the question of racial bias of the examinations would seem to be beneficial to all concerned.

7. The Court below seemed to place great emphasis on the fact that this case was filed on March 12, 1974, whereas the respective eligible lists were established in October and December of 1973. In attributing the delay in filing to the appellants, the Court below neglected to consider the uncontroverted affidavits of plaintiffs McNair and Gadsden.

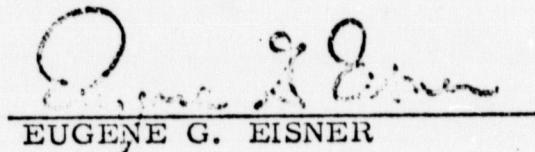
McNair stated at paragraph 12 of his affidavit that although he had "passed" the examination, he was notified in January of this year that he would be replaced by someone who had received a higher passing score.

The McNair affidavit not only explains the delay in filing but substantiates the validity of Professor Cloward's distinction between "high pass" and "pass" statistics. The pass statistics submitted by the appellees and accepted by the Court simply do not conform to the reality of who will remain on the job and who will be fired.

The Gadsden affidavit states that she was not notified that she was to be fired until February, 1974 (paragraph 9). Even after she was so informed, the YSA Director of Personnel told her that she wasn't sure that plaintiff Gadsden would be fired because

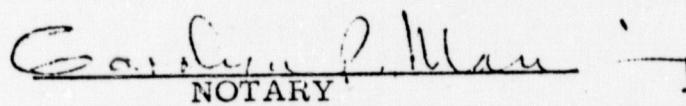
"there was much confusion" (paragraph 10).

8. Should this Court grant the stay requested by appellants, we would, of course, be prepared to file an expedited appeal.



EUGENE G. EISNER

Sworn to before me this
29th day of March, 1974.


NOTARY

CAROLYN P. MANNING
Notary Public, State of New York
No. 03-7700450
Qualified in Bronx County
Commission Expires March 30, 1974

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NELLIE HILL, TONY CHOW, JAMES
GARCIA, WALTER MCNAIR, LINO
ACEVEDO, BARBARA GADSDEN,
each individually and on behalf
of all others similarly situated,

Plaintiffs,

-against-

THE NEW YORK CITY HUMAN
RESOURCES ADMINISTRATION,
et al.,

Defendants.

AFFIDAVITS IN OPPOSITION TO
MOTION FOR STAY PENDING APPEAL

RECEIVED FEB 1 1974

ADRIAN P. BURKE

NORMAN REDKIN

Corporation Counsel

MUNICIPAL BUILDING

NEW YORK, N. Y. 10007

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
NELLIE HILL, TONY CHOW, JAMES GARCIA,
WALTER MCNAIR, LINO ACEVEDO, BARBARA
GADSDEN, each individually and on behalf
of all others similarly situated,

Plaintiffs,

74/1415

vs.

THE NEW YORK CITY HUMAN RESOURCES
ADMINISTRATION, et al.,

Defendants.

-----x
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

PAULA J. OMANSKY, being duly sworn, deposes
and says:

1. I am an Assistant to ADRIAN P. BURKE,
Corporation Counsel, attorney for the defendants, and
submit this affidavit in opposition to plaintiffs'
motion for a stay of appointments to positions in the
Youth Services occupational series, pending appeal of
the decision of Judge Lasker, dated March 27, 1974, de-
nying plaintiffs' motion for a preliminary injunction.

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2. Plaintiffs knew the results of two of the three challenged examinations as early as October, 1973, and of the third, in December, 1973.

3. By the time plaintiffs filed suit on March 12, 1974, 57 appointments from the list to the position of Assistant Youth Services Specialist had already been made. (Repetto affidavit verified March 20, 1974, para. 6).

4. Thirty-eight appointments to the position of Youth Services Specialist (YSS), scheduled for March 15, were stayed on the eve of appointment by the issuance of the restraining order on March 14, 1974. Since it was too late to notify all prospective employees, some reported to work, only to be turned away (Repetto affidavit, verified April 1, 1974, para 5).

5. Of these 38, 11 had given up jobs to accept employment with the Agency; 6 were previously unemployed; and 9 were employed by the Agency in lesser paying positions (Exhibit A to Repetto affidavit, verified April 1, 1974). The money lost to these individuals during their unemployment or employment in lower paying positions cannot be recovered by them.

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6. Appointments to the position of Assistant Supervisor, Youth Services, were scheduled for March 29, 1974 and were similarly blocked.

7. Further delay in making appointments from the list will obstruct the work of the Agency. Appointments were scheduled in March in order to insure an orderly transition of duties between present and prospective employees and to permit new personnel to become acquainted with the youths of the City before the summer months so that programs might be tailored to meet their needs.

8. If a stay were granted pending appeal, a decision of this Court could not be expected before late April or early May. If the appeal is unsuccessful, the agency could not make appointments before May, thus losing a critical two months necessary for the preparation of summer programs.

9. Were plaintiffs to prevail on this appeal, and even eventually on the merits, the relief to which they would be entitled is the administration of a job-related examination. Vulcan Society v. Civil Service Comm'n, 360 F. Supp. 1265, 1277-78, (S.D.N.Y. 1973), aff'd 490 F. 2d 387 (2d Cir. 1973). They would not be entitled to an order directing defendants to appoint those currently serving as provisional employees to permanent positions.

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Matter of Board of Education v. Nyquist, 31 N.Y. 2d 468

(1973). Courts have refused to authorize appointments to public employment of persons who have not passed some kind of test demonstrating their qualifications for the job.

Bridgeport Guardians, Inc. v. Bridgeport Civil Service

Comm'n, 354 F. Supp. 778, 797 (D. Conn., 1973), aff'd in ^{1/12} relevant part, F 2d 1333 (2d Cir., 1973).

10. In Guardians Association v. Civil Service Comm'n, 490 F. 2d 400 (2d Cir. 1973), a stay pending appeal of further appointments to the position of policeman was denied even though some plaintiffs had failed the examinations and were thus foreclosed from appointment and employment until a new examination was given and they took and passed that future examination.

11. The persons appointed from the eligible list who will be replacing plaintiffs are largely members of minority groups. There were 51 minorities serving as of March 20, 1974, as provisional Assistant Youth Services Specialists (Repetto affidavit, verified March 20, 1974, para. 11). Fifty-seven permanent appointments have already been made from the challenged eligible list for this position, 48 of the persons already appointed are minority group members. An additional 31 minority group members wait to be appointed (Repetto affidavit, verified April 1, 1974, para 9).

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12. For the position of Youth Services Specialist, there are currently 49 minorities and 13 Whites serving provisionally (Repetto affidavit verified March 20, 1974, para. 11). They stand to be replaced by a group comprised of 43 minorities and 21 Whites (Ibid., para. 8).

13. Assuming, arguendo, that plaintiffs had made out their prima facie case of disparate impact, this would not necessarily have entitled them to preliminary injunctive relief. Pride v. Community School Board of Brooklyn, 482 F. 2d 257, 264. (2d Cir. 1973). In Guardians Association v. Civil Service Commission, 490 F. 2d 400 (2d Cir. 1973) the denial of a preliminary injunction was affirmed notwithstanding a strong showing of disparate impact, confirmed by an independent survey.

In this case, there is even a threshold question of whether plaintiffs have made out a prima facie case, making the grant of a stay pending appeal all the more inappropriate.

Paula J. Omansky
PAULA J. OMANSKY

Sworn to before me this

1st day of April, 1974

DONALD J. TOBIAS
NOTARY PUBLIC
STATE OF NEW YORK
#FSI-4512490

Qualified in New York County,
Commission Expires 3/30/75

Donald J. Tobias

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
NELLIE HILL, TONY CHOW, JAMES GARCIA, :
WALTER McNAIR, LINO ACEVEDO, BARBARA :
GADSDEN, each individually and on :
behalf of all others similarly :
situated, :

Plaintiffs, :

vs. : 74-1415

THE NEW YORK CITY HUMAN RESOURCES :
ADMINISTRATION, et al., :

Defendants. :

-----x
STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

BARBARA REPETTO, being duly sworn, deposes and
says:

1. I am Director of Personnel for the Youth
Services Agency and submit this affidavit in opposition
to plaintiffs' motion for a stay pending appeal.

2. The Youth Services Agency is responsible
for administering programs geared, as its name implies,
to the youth of New York City, between the ages of 7 and
21. Among its chief responsibilities is to develop con-
tacts between its personnel and the youth it serves so

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that meaningful programs can be devised. Examples of these programs include organized recreation, individual and group counseling, employment counseling, referrals to drug abuse and other health treatment programs, and high school equivalency training. This is particularly necessary during the summer months when many young persons would be unemployed and/or idle but for Agency programs.

3. In preparation for the summer months, the Agency planned to appoint eligibles from the lists established as a result of examinations for Assistant Youth Services Specialist, Youth Services Specialist, and Assistant Supervisor of Youth Services to replace provisionals currently serving. These appointments were scheduled to be completed in March, thus affording sufficient time to train the new employees and to permit them to become personally acquainted with Agency programs and with the young people they would work with in these programs.

4. The issuance of the temporary restraining order barring appointments has already interfered with the Agency's work and projected time-table.

5. Furthermore, it has injured, in particular,

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those persons on the eligible list for Youth Services Specialist. A group of 38 were scheduled for appointment on March 15, 1974, to begin work on March 18, 1974. The temporary restraining order was issued on March 14, too late to notify the total number of the eligibles, some of whom reported to work on March 18 only to be sent home.

6. For purposes of this motion, a list of those persons who were scheduled to begin work on March 18, 1974 was compiled, showing their past employment status. That list is attached as Exhibit A. Of these persons, 11 gave up employment to accept positions with the Agency; 6 were previously unemployed; 9 are employed by the Agency in lesser paying titles, including 3 whose salaries are federally funded through the Emergency Employment Act, scheduled to expire June 30, 1974.

7. A similar list was compiled, and attached as Exhibit B, for persons who have accepted appointment as Assistant Youth Services Specialist. The appointments were originally scheduled for March 29, 1974, but due to the restraining order have been blocked, causing uncertainty and confusion for both the eligibles and the Agency.

94 a

8. The Agency has received numerous telephone calls from waiting eligibles but is unable to provide specific information as to whether or not any appointments will be made. Many of these eligibles, presently employed elsewhere, have jeopardized their present status because their employers know of their acceptance of City employment.

9. The Agency continued to schedule interviews during the pendency of the restraining order. For Assistant Youth Services Specialist, Nos. 151 through 300 were called. Of those interviewed, 21 were white; 21, black; 6 Hispanic; 2, Oriental; and 2, Middle-Eastern. Forty-eight of the 52 interviewed have accepted employment with the Agency (Exhibit B).

10. For the position of Youth Services Specialist, Nos. 121-145 were called. Nine failed to report for interview; 6 declined appointment; 1 "call letter" was returned. Eight accepted employment: 3 Black, 5 white.

Barbara Repetto
Barbara Repetto

Sworn to before me
this 1st day of April, 1974

Paula J. Omansky

PAULA J. OMANSKY
Notary Public, State of New York
No. 31-2962142
Qualified in New York County
Commission Expires March 30, 1973

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2181 Youth Services Specialist -

All Scheduled to Begin 3-18-74

Acceptances

Frederick Martin
311 Patchen Avenue
Brooklyn, New York 11233

Gave up position with H.D.A.
(unemployed)

David Owens
30 Judith Drive
Coram, L.I., N.Y. 11727

AYSS-Provisional

Robert I. Healy
418 West 17th Street
New York, New York 10011

Gave up position with United
Catholic Parents. (unemployed)

Alton R. Carter
111-36 134 Street
Jamaica, New York 11420

AYSS

Roy E. Providence
3170 Broadway, 3J
New York, New York 10027

EEA- Community Youth Worker
\$8,000/yr.

Ronald Filmore
449 Second Avenue
New York, New York 10010

Gave up sales position with
Alfred Dunhill. (unemployed)

Virginia Savio
2179 Washington Avenue
Bronx, New York 10457

Unemployed

Willie L. Churchill
2588 Seventh Avenue
New York, New York 10039

Prov. A:S.Y.S.

Robert A. Wise
295 St. Nicholas Ave., 3R
Ridgewood, New York

Prov. Y.S.S.

Olive Mattos
683 Stone Avenue
Brooklyn, New York 11212

Gave notice on \$6500/yr.
position with Tilden Comm.
Center. (Unemployed)

Jose Sanoguet
616 West 204 Street
New York, New York 10034

Unemployed- Gave up position
with NYPD at \$8400/yr. Wife
pregnant.

Clinton Jones
744 East 181 Street
Bronx, New York 10457

Prov. Y.S.S.

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Exhibit A

Y.S.S. Acceptances

Page 2

All Scheduled to Begin 3-18-74

James Carter
225 Cross Bronx Expwy.
Bronx, New York 10457.

Unemployed

Jerome Stewart
300 Cherry Street, 3H
New York, New York 10002

EEA Community Youth Worker
\$7,853/yr.

Leonora Azouz
8630 23 Avenue
Brooklyn, New York 11214

Gave up clerical position
\$7,190/yr. with U.S. Coast
Guard. (unemployed)

Betty Eagleton
1991 Sedgwick Avenue #17
New York, New York 10453

Y.S.S. Provisional

David Lau
83-13 Broadway
Elmhurst, New York 11373

Y.S.S. Provisional

V. Rajab Abdurrahim
580 Stanley Avenue, 6C
Brooklyn, New York 11207

Gave notice on clerk position
\$7100/yr. with a hospital.
(unemployed)

Jacqueline Y. Williams
217-33 109th Avenue
Queens Village, New York 11429

Provisional Y.S.S.

Ronald M. Rivera
245 East 178 Street, 3A
Bronx, New York 10457

Permanent A.Y.S.S.

Lawrence P. Mannion
3026 Bainbridge Avenue
Bronx, New York 10458

Provisional Y.S.S.

Iris Manley
765 F.D.R. Drive
New York, New York 10009

Unemployed

Albeon Jackson
40-20 Beach Channel Dr., 10B
Far Rockaway, New York 11691

Gave up \$110/wk. porter's
position with Wynden Houses.
unemployed

Frank Barrett
275 Blake Avenue, 5H
Brooklyn, New York 11212

Unemployed

Peter J. Ward
338 East 83rd Street, 2D
New York, New York 10028

Prov. A.S.Y.S.

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All Scheduled to Begin 3-18-74

Michael Green 88-73 193 Street, 6I New York, New York 11423	Provisional AYSS at \$8,000
James E. Farrar 135 West 183 Street Bronx, New York 10453	Gave up \$9500 position with VERA Institute of Justice. Unemployed.
Joseph Major 850 President Street, #1 New York, New York 11215	Provisional Y.S.S.
Charles Mayes 364 Third Avenue, #7 New York, New York 10016	Unemployed.
Alan Molnar 38 Monroe Street, EK9 New York, New York 10002	Gave up position with Dept. of Social Services. Unemployed.
Isaiah Fulton, Jr. 226 East 6th Street New York, New York, 10003	E.E.A.- Community Youth Worker \$7800/yr.
Philip A. Aldridge 50-10 31 Avenue Woodside, New York 11377	Provisional Y.S.S.
Virginia Lipinsky 62-71 60 Drive Maspeth, New York 11378	Unemployed.
Robert C. Davis 1210 Stratford Avenue, 5C Bronx, New York 10472	Gave up position with Parks Department. Unemployed.
Juan Laureda 674 West 161 Street New York, New York	Permanent AYSS
Basil Nias 853 Riverside Drive New York, New York 10032	Provisional Y.S.S.
Bernard F. Schwarz 2959 Baisley Avenue Bronx, New York 10461	
Ethues Jones 25 West 132 Street, 14E New York, New York 10037	A.Y.S.S.

982

Acceptances

Anthony Gustus
62 Roxbury Street
Staten Island, NY 10303

unemployed

Ruth Bassis
68 20 218 Street
Bayside, NY 11364

employed \$3.60/hr.
York College of CUNY
150-14 Jamaica Avenue

Emile V. Ishak
2700 Kennedy Blvd. #310
Jersey City, NJ 07306

unemployed

John Parham Jr.
120 18 201 Street
St. Albans, NY 11412

unemployed

Richard Cardin
69 Macon Street
Brooklyn, NY 11216

employed \$6300
Dept. of Correction
268 Ashland Place B'klyn NY

Evelyn Gari
2966 Avenue V Apt. 5E
Brooklyn, New York 11229

employed EEA Youth Services
36 Park Row
New York, New York \$7938.

James Flanagan
613 Broadway
Bayonne, NJ 07002

unemployed

Suad Basili
21 69 Shore Blvd.
Astoria, NY 11105

employed
Merrill Lynch
1 Liberty Plaza \$7000

David V. Console
425 East 74th Street #1A
New York, NY 10021

unemployed

John M. Bealey
99 Bank Street c/o Majecki
New York, NY 10014

unemployed

Robert A. Fishman
2320 Barnes Avenue
Bronx, New York 10467

unemployed

Tony Chow
54 Catherine Street 5H
New York, NY 10038

employed \$7500
EEA Youth Services
98 Norfolk Street

992

Exhibit B

Eugene Simon 220 Montgomery Street 10F Brooklyn, NY 11225	employed \$7900 EEA 109-04 160th Street Jamaica, NY
Richard Noren 165 Nichols Avenue Brooklyn, NY 11208	employed \$7900 EEA Youth Services 354 Broadway NY, NY
Alicia Rentas 20 Paladino Avenue 7E New York, NY 10035	employed \$6300 Educational Associate PS 112-206 E. 120th Street
Levester Gates 191 Willoughby Street 10F Brooklyn, NY 11201	employed \$8900 EEA Police Officer Assoc. 1 Police Plaza NY, NY
Raffaele Manzi 2970 West 27th Street PO BOX 81 Brooklyn, New York 11224	employed \$10,005. Youth Services CPD 6 South Brooklyn 210 Joralemon Street Brooklyn, NY
Alan Spiegelman 2002 Yates Avenue Bronx, NY 10461	unemployed
Grace Aluert 255 Clawson Street Staten Island, NY	unemployed
Samuel Kowalsky 50 Columbia Street 5A New York, NY	EEA Youth Services H.R.A. 66 Leonard Street employed \$7900
William Divietro 1580 Pelham Pkwy South Bronx, NY 10461	unemployed
Andrew Goe 107 24 81 Street Ozone Park, NY 11417	unemployed
Victor Fernandez 380 Cozine Avenue Brooklyn, NY 11207	EEA Youth Services \$7858 employed 38 Park Row
Calvin Bradley 777 Carroll Street Brooklyn, NY 11215	EEA NYC Consumer Affairs 80 Lafayette Street employed \$7654
James Plummer 189-14 117 Road St. Albans, New York 11412	employed \$7900, Youth Services Prov. Asst. VSS 38 Park Row
Samuel Irizarry, Jr. 153 Norfolk Street New York, New York 10002	unemployed

1002

John Simpson, Jr.
1895 Second Avenue, 4B
New York, New York 10029

employed \$13,000, N.Y.S.
Drug Abuse Control Commission
Centuck Station, Sprain Road,
Yonkers, New York

Rita Schultz
4 Jones Street
New York, New York 10014

employed \$7400, Phoenix House
325 West 85th Street
Legal Liaison

James Wallace
116-36 126 Street
South Ozone Park, New York 11420

employed \$7250
F.E.A.- Queens General Hospital
82-15 164 Street, Nurses Aide

Robert J. Green
25 St. Nicholas Avenue
New York, New York 10037

employed \$8000
Fashion in Paris
525 7th Avenue, New York, N.Y.

John M. Reid
602 Troy Avenue
Brooklyn, New York

unemployed

Luke Bracev, Jr.
790 Elberts Lane, 11K
Brooklyn, New York 11208

employed \$6500, Longchamps
Management, 230 Park Avenue
New York, N.Y., Accts. Payable
Clerk

Edward Karmel
73-13 71 Street
Glendale, New York 11227

unemployed

Agustin Lopez
300 Sullivan Place, 4D
Brooklyn, New York 11213

employed \$7800
FFA- Youth Services
38 Park Row, New York

Jacille Rahman
77-37 166 Street
Flushing, New York 11366

unemployed

Stanley Howell
2541-2555 Seventh Avenue, 6K
New York, New York 10039

unemployed

John Price
134 Cornelia Street
Brooklyn, New York 11221

employed \$6408
Mail Clerk, U.S. Customs
6 World Trade Center

Edward J. Birch
2818 West Eighth Street
Brooklyn, New York 11224

employed parttime
Jewish Comm House of Bensonhurst
7802 Bay Pkwy., Counselor &
Phys. Ed. Asst. \$2500 and
City of NY Dept of Personnel
220 Church St., Supervising
monitor \$1000

Audrey McCoy
205 Clinton Avenue, 8D
Brooklyn, New York 11205

employed

10/2

Nadine Valenti
38 Patchogue Road
Mastic, New York

unemployed

Michael Earl
159 Maple Street
Brooklyn, New York 11225

unemployed

Louise A. Lane King
4220-21 Hutch. River Pkwy. E
Bronx, New York 10457

employed \$5200
Morgan-Grampian, Inc.
16 West 61 Street, N.Y., N.Y.
Office Clerk

Chin Chang
1160 Cromwell Avenue, 6E
Bronx, New York 10452

employed \$7800, Rater
Cosmopolitan Mutual Insurance
10 Columbia Circle, New York

Richard Daly
4582 Manhattan College Pkwy.
Bronx, New York 10471

employed \$10,500
Ed. of Ed., DeWitt Clinton H.S.
Bronx, New York 10468
Math teacher/per diem

Ralph Wemberly
1056 Sherman Avenue, 6F
Bronx, New York 10456

employed \$8200
N.Y. Police Dept.
205 Mulberry Street
Police Officer Assoc.

Richard McGrade
89-64 216 Street
Queens Village, New York 11427

employed \$7000
Senior Clerk
Queens Hospital Center
164th St., Jamaica

James Chenault
1063 Evergreen Avenue
Bronx, New York 10472

employed- part-time
Public School Athletics League
\$40/wk., 300 West 43 Street
N.Y., N.Y. 10036, track meet
official

Norberto Serrano
1822 Davidson Avenue, 1E
Bronx, New York 10453

employed-\$7200
Hunts Point Corp. Corp
541 East 138 Street
Bronx, New York
Job Developer

1022

C 1

74-1415 - UNITED STATES COURT OF APPEALS

Second Circuit



At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the **second** day of **April**, one thousand nine hundred and **seventy-four**.

Nellie Hill, et al.,

Plaintiffs-Appellants

v.

**The New York City Human Resources
Administration, et al.,**

Defendants-Appellees.

It is hereby ordered that the motion made herein by counsel for the

appellant

appellee

petitioner

respondent

by notice of motion dated **March 29, 1974** for a **stay pending appeal; preference**

be and it hereby is granted. **denied**

It is further ordered that the appellants shall file their brief and joint appendix on or before April 10, 1974; that the appellees shall file their briefs on or before April 19, 1974; that all parties may file their papers in typewritten form and that the appeal shall be set for argument during the week of April 22, 1974.

A. DANIEL FUSARO
Clerk

By **Edward J. Guardaro**
Senior Deputy Clerk

BEFORE: **HON. PAUL R. HAYS**

HON. JAMES L. CAHAN
Circuit Judges

HON. A. SHERMAN CHRISTENSEN
District Judge **Circuit Judges**

103a

